# CARD 1

11

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

## No. 570.

UNION PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

LARAMIE STOCK YARDS COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WYOMING.

FILED MAY 23, 1913.

(23,715)

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INDEX.



JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 23, 1913.

1 UNITED STATES OF AMERICA,
*District of Wyoming, ss:*

In obedience to the command of the within writ, I herewith transmit to the United States Supreme Court, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of the United States District Court for the District of Wyoming, this ninth day of May, A. D. 1913.

[Seal United States District Court, District of Wyoming.]

CHARLES J. OHNHAUS,
*Clerk U. S. District Court, District of Wyoming.*

2 In the District Court of the United States, Eighth Judicial Circuit, District of Wyoming.

UNION PACIFIC RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
LARAMIE STOCK YARDS COMPANY, a Corporation, Defendant.

*Petition.*

Comes now said plaintiff, Union Pacific Railroad Company, and complaining of the said defendant, Laramie Stock Yards Company, for cause of action against it, alleges:

1. That the plaintiff herein is a corporation organized and existing under and by virtue of the laws of the State of Utah, with its principal place of business at Salt Lake City in said State, and is a citizen and resident of the State of Utah.

2. And plaintiff alleges that the said defendant is a corporation organized and existing under and by virtue of the laws of the State of Wyoming, with its principal place of business at Laramie City in said State, and is a citizen and resident of the State of Wyoming, and that the cause of action of the plaintiff arises under the laws of the United States of America, to-wit, the statutes hereinafter more specifically mentioned and described, and that the pretended defense of the said defendant herein, as plaintiff is informed and be-

3 lieves, arises under certain supposed laws of the Congress of the United States, to-wit, a supposed act entitled "An Act Legalizing certain conveyances heretofore made by the Union Pacific Railroad Company," approved June 24th, 1912, but which act plaintiff alleges is unconstitutional in that it seeks to deprive this plaintiff of its vested rights and titles in and to the lands hereinafter described, and to deprive this plaintiff of said lands and property without due process of law.

3. And plaintiff avers that the real estate in controversy in this cause is of great and special and peculiar value by reason of its location and its access to water, to-wit, of a value of more than Three Thousand Dollars, and that the matter in controversy in this cause is of the sum and value of more than Three Thousand Dollars exclusive of interest and costs.

4. And plaintiff avers that the said plaintiff is engaged in the operation of a railroad, beginning at Ogden, in the State of Utah, and extending thence easterly through the states of Utah, Wyoming, Colorado, Nebraska, Missouri, Kansas and Iowa, and that its principal line extends from Ogden, in the State of Utah, to Council Bluffs, in the State of Iowa, and through and along the lands hereinafter described; that the right of way of the said railroad in crossing the State of Wyoming passes through the following lands in the County of Albany, in the State of Wyoming; towit: Section Twenty (20) Township Sixteen (16) North, Range Seventy-three (73) West of the Sixth Principal Meridian, and that the said right of way is made by Section 2 of the Act of Congress of July 1st, 1862, hereinafter specifically set forth, of the width of four hundred (400) feet and was acquired by The Union Pacific Railroad Company, predecessor in interest of the plaintiff herein, as hereinafter set forth.

4 5. That the right of way in question was acquired by The Union Pacific Railroad Company under and by virtue of a grant of Congress of July 1st, 1862, as contained in an act entitled, "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military and other purposes." That in Section 2 of said last mentioned act, it is provided as follows: "That the right of way through the public lands be and is hereby granted to said company (The Union Pacific Railroad Company) for the construction of said railroad and telegraph line; and that the right, power and authority is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber and other materials for the construction thereof; said right of way is granted to the said railroad to the extent of two hundred feet in width on each side of said railroad as it may pass over the public lands, including all necessary ground for stations, buildings, work shops, machine shops, switches, side tracks, turntables, and water stations." That the grant aforesaid applied to this plaintiff's right of way through the said County of Albany and State of Wyoming, and to the property hereinafter described and particularly involved in this suit, the said property at the time of the passage of the act aforesaid being included within the designation of "public lands", the same being lands to which no right whatever had attached at the time when the said grant took effect.

6. That by virtue of the said Act of Congress of July 1st, 1862, and acts amendatory thereof and supplemental thereto, the Kansas Pacific Railway Company, The Denver-Pacific Railway
5 and Telegraph Company, and The Union Pacific Railroad Company, theretofore organized and existing in pursuance of

said Acts and subjects to and enjoying the rights created thereby, were consolidated into a new corporation known as "The Union Pacific Railway Company", and the new corporation thus created became vested with all the rights belonging to the said constituent corporations as they existed at that time, and which were secured to them under and by virtue of the aforesaid act of July 1st, 1862, and the acts of Congress amendatory thereof and supplemental thereto, as aforesaid; that the original The Union Pacific Railroad Company at the time of the consolidation thus specified, had certain liens outstanding against its property, which were thereafter foreclosed by the lien holders in the manner required by law, and the present Union Pacific Railroad Company, the claimant herein, through purchase succeeded to all the rights and property of the said The Union Pacific Railway Company, including the four hundred foot right of way hereinbefore referred to, and by virtue of the Congressional Acts in question, and by virtue of the consolidation and the purchase hereinbefore specified, this plaintiff, Union Pacific Railroad Company, acquired and now possesses the legal estate in the following described portion of said right of way, to-wit: Beginning at a point on the south line of Section twenty (20) in Township sixteen (16) North, Range Seventy-three (73) West of the Sixth Principal Meridian, in Albany County, Wyoming, a distance of fifty (50) feet westerly from and measured at right angles to the center line of the railroad track of Union Pacific Railroad Company, and running thence westerly along said section line to a point two hundred (200) feet westerly from and measured at right angles to the center line of
6 said railroad track; thence northerly on a line parallel with the said railroad track fifty-two hundred and eighty (5280) feet, more or less, to the north line of said section twenty; thence easterly along the said north line to a point fifty (50) feet westerly from and measured at right angles to the center line of said railroad track; thence southerly along a line parallel to the said railroad track fifty-two hundred and eighty (5280) feet, be the same more or less, to the place of beginning.

7. That the plaintiff, Union Pacific Railroad Company, is entitled to the immediate possession of the above described property, and its claim and right to such possession is unlawfully and wrongfully denied and withheld by the defendant, and the said defendant unlawfully keeps this plaintiff out of the possession thereof.

Wherefore, the plaintiff prays judgment against the defendant for the delivery of the property hereinbefore described, and for the costs of this suit, and all other proper relief.

UNION PACIFIC RAILROAD COMPANY,
By HERBERT V. LACEY,
JOHN W. LACEY,
*Its Attorneys.*

STATE OF WYOMING,
*County of Laramie*, ss:

Herbert V. Lacey being duly sworn on his oath according to law, deposes and says, that he is one of the attorneys of the Union Pacific

Railroad Company in the above entitled cause; that he has read the foregoing petition and verily believes that the facts therein set forth are true.

HERBERT V. LACEY.

7 Subscribed in my presence and sworn to before me this 11th day of January, A. D. 1913.

[SEAL.] JENNIE M. TUPPER,
*Notary Public.*

Endorsements: No. 729. In the District Court of the United States, District of Wyoming. Union Pacific Railroad Company, a corporation, Plaintiff, vs. Laramie Stock Yards Company, a corporation, Defendant. Petition. Filed Jan. 11, 1913. Charles J. Ohnhaus, Clerk. Lacey & Lacey, Cheyenne, Wyo., for Plaintiff.

8 In the District Court of the United States, Eighth Judicial Circuit, District of Wyoming.

UNION PACIFIC RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
LARAMIE STOCK YARDS COMPANY, a Corporation, Defendant.

*Precipe.*

The Clerk will please issue summons in said cause directed to the United States Marshal for the District of Wyoming and returnable as required by law, and endorse on summons action to recover possession of real property.

HERBERT V. LACEY,
JOHN W. LACEY,
*Attorneys for Plaintiff.*

Endorsements: No. 729. In the District Court of the United States, District of Wyoming. Union Pacific Railroad Company, a corporation, Plaintiff, vs. Laramie Stock Yards Company, a corporation, Defendant. Precipe. Filed Jan. 11, 1913. Charles J. Ohnhaus, Clerk. Lacey & Lacey, Cheyenne, Wyo., for Plaintiff.

9 *Summons—United States District Court.*

UNITED STATES OF AMERICA,
*District of Wyoming, ss:*

In the District Court of the United States for the District of Wyoming.

The President of the United States of America to the United States Marshal of the District of Wyoming, Greeting:

You are hereby commanded to notify Laramie Stock Yards Company, a corporation, that it has been sued in the District Court of

the United States for the District of Wyoming, sitting at Cheyenne, by Union Pacific Railroad Company, a corporation, and that unless it answers the petition of the plaintiff, herein filed, on or before the 8th day of February A. D. 1913, said petition, with the matters and allegations therein contained will be taken as true, and judgment rendered accordingly.

And make due return of this writ, according to law, on the 20th day of January, A. D. 1913.

Witness, The Honorable John A. Riner, Judge of the said District Court, and the seal thereof, at the City of Cheyenne, in said District, this 11th day of January, A. D. 1913, and of the Independence of the United States the 136th year.

[SEAL.] CHARLES J. OHNHAUS, *Clerk.*

10 UNITED STATES OF AMERICA,
*District of Wyoming, ss:*

I hereby certify that I received the within summons on the 13th day of Jan'y, 1913, at 10 o'clock A. M., and served the same at the District aforesaid, on the Laramie Stock Yards Company, a Corporation, by delivering a certified copy thereof to H. A. Smith, personally, he being the designated agent for service of said corporation, at Laramie, County of Albany, State and District of Wyoming, on January 13, 1913.

H. L. PATTON,
*United States Marshal for District of Wyoming,*
By L. E. SNOW, *Deputy.*

Marshal's Fees:

| | |
|---|---|
| Service | $4.00 |
| Mileage | 6.84 |
| | $10.84 |

Endorsements: No. 729. District Court of the United States, District of Wyoming. Union Pacific Railroad Company, a corporation, Pl'tf, vs. Laramie Stock Yards Company, a corporation, Def't. Summons. Civil Action for the recovery of Possession of real property. Issued January 11, 1913. Filed January 16, 1913. Charles J. Ohnhaus, Clerk, by Florence Bradley, Deputy. H. V. Lacey, Plaintiff's Attorney.

11 In the District Court of the United States, Eighth Judicial Circuit, District of Wyoming.

UNION PACIFIC RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
LARAMIE STOCK YARDS COMPANY, a Corporation, Defendant.

*Answer.*

Comes now the defendant, Laramie Stock Yards Company, a corporation, and for its answer to the petition of the plaintiff, as its defense in the above entitled action, shows to the Court as follows, to-wit:

I. Admits that the plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Utah, with its principal place of business at Salt Lake City in said State, and that it is a citizen and resident of said State of Utah.

II. Admits that the defendant is a corporation organized and existing under and by virtue of the laws of the State of Wyoming, with a principal place of business at Laramie City in said State, that it is a citizen and resident of the State of Wyoming, and that the cause of action arises under the laws of the United States of America, by virtue of the Act of Congress as alleged in plaintiff's petition.

12 III. Admits that the value of the land in controversy and concerning which said action is brought is of the value of more than three thousand ($3,000.00) Dollars, exclusive of interest and costs.

IV. Admits that plaintiff is engaged in the operation of a railroad between Ogden, Utah and Council Bluffs, Iowa, and that the same passes through the lands in the County of Albany in the State of Wyoming, under a right of way provided by an Act of Congress, as set forth in clause 4 of plaintiff's petition.

V. Admits that the right of way of plaintiff through and across the lands in controversy in this suit was acquired by plaintiff under the Act of Congress, and that the same were public lands to which no right had at the time attached as alleged in paragraph 5 of plaintiff's petition.

VI. Admits the consolidation of the various railroad companies and the legal succession of the plaintiff to all the rights theretofore granted to said companies under Acts of Congress, including a right of way four hundred feet in width through the said County of Albany, Wyoming, which said right of way four hundred feet wide, includes the real estate, specifically described in paragraph 6 of plaintiff's petition.

VII. Denies that plaintiff possesses the legal estate in said specifically described lands, or that it is entitled to the possession of said lands, or that said lands are wrongfully withheld from plaintiff by defendant, but alleges the facts to be, that this defendant is now in possession of said lands, and that it and its immediate grantors for more than ten years immediately prior to the filing of

13 plaintiff's petition herein have been in continuous, quiet, peaceable, undisputed, open and notorious possession of said lands, holding the same adversely to all persons and particularly to the plaintiff herein, and that by virtue of an Act of Congress of the United States, entitled, "An act legalizing certain conveyances heretofore made by the Union Pacific Railroad Company," approved June 24th, 1912, the possession of said lands by this defendant and its grantors as aforesaid, constitutes a bar to plaintiff's action herein.

Wherefore, Defendant prays to be dismissed hence with its costs herein expended and for all proper relief.

RODERICK N. MATSON,
T. BLAKE KENNEDY,
*Attorneys for Defendant.*

THE STATE OF WYOMING,
*County of Laramie, ss:*

T. Blake Kennedy, being duly sworn deposes and says that he is one of the Attorneys for defendant, who is mentioned in the above and foregoing answer; that he has read said answer and knows the contents thereof, and that the statements therein contained are true as he verily believes.

T. BLAKE KENNEDY.

Subscribed and sworn to before me this 7th day of February, A. D., 1913.

B. H. FINKBINER,
*Notary Public.*

[SEAL.]

My Commission expires January 19th, 1914.

14 Endorsements: No. 729. In the District Court of the United States, Eighth Judicial Circuit, District of Wyoming. Union Pacific Railroad Company, a corporation, Plaintiff, vs. Laramie Stock Yards Company, Defendant. Answer. Filed Feb. 8, 1913. Charles J. Ohmhaus, Clerk. Matson & Kennedy, Attorneys for the Defendant, Cheyenne, Wyo.

15 In the District Court of the United States, Eighth Judicial Circuit, District of Wyoming.

UNION PACIFIC RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
LARAMIE STOCK YARDS COMPANY, a Corporation, Defendant.

*Demurrer to Defendant's Answer.*

Comes now the said plaintiff, Union Pacific Railroad Company, and demurs to the answer of said defendant, Laramie Stock Yards Company, for that said answer does not state facts sufficient to constitute a defense to the cause of action set forth in the plaintiff's petition in said cause.

HERBERT V. LACEY,
JOHN W. LACEY,
*Attorneys for Plaintiff, Union Pacific Railroad Company.*

Endorsements: No. 729. In the District Court of the United States, District of Wyoming. Union Pacific Railroad Company, a corporation, Plaintiff, vs. Laramie Stock Yards Company, a corporation, Defendant. Demurrer to Defendant's Answer. Filed Feb. 28, 1913. Charles J. Ohmhaus, Clerk. Lacey & Lacey, Cheyenne, Wyoming, for Plaintiff.

16 TUESDAY, *March* 4, 1913.

In the District Court of the United States for the District of Wyoming.

No. 729. Civil.

UNION PACIFIC RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
LARAMIE STOCK YARDS COMPANY, a Corporation, Defendant.

*Demurrer to Answer Argued and Taken under Advisement.*

At this day comes the plaintiff by John W. Lacey, Esquire, its attorney, and the defendant, by T. Blake Kennedy, Esquire, its attorney, also comes. And the demurrer to the answer herein coming on now to be heard, is argued by counsel, and by the court taken under advisement.

17 In the District Court of the United States, Eighth Judicial Circuit, District of Wyoming.

No. 729.

UNION PACIFIC RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
LARAMIE STOCK YARDS COMPANY, a Corporation, Defendant.

*Order and Judgment.*

Comes now the said plaintiff, Union Pacific Railroad Company, by Herbert V. Lacey and John W. Lacey, its Attorneys, and also comes the said defendant, Laramie Stock Yards Company, by Roderick N. Matson and T. Blake Kennedy, its attorneys, and this cause is now submitted to the Court on the demurrer of the plaintiff to the answer of the defendant. And the Court having read and considered the pleadings in said cause and the demurrer to the said answer, and having heard the arguments of counsel and being now sufficiently advised, does now overrule the said demurrer, to which ruling of the Court the plaintiff now at the time excepts, and the plaintiff now declines to plead further.

Whereupon it is now considered, ordered and adjudged by the Court that the plaintiff take nothing in said action, and that the defendant do have and recover of and from the plaintiff its costs herein expended, to be taxed; to which ruling and judgment
18 of the Court plaintiff now at the time excepts.

Endorsements: No. 729. In the District Court of the United States, Eighth Judicial *District*, District of Wyoming. Union Pacific Railroad Company, a corporation, Plaintiff, vs. Laramie Stock Yards Company, a corporation, Defendant. Order and judgment. Filed Mar. 25, 1913. Charles J. Ohmhaus, Clerk.

19 In the District Court of the United States, Eighth Judicial Circuit, District of Wyoming.

No. 729. At Law.

UNION PACIFIC RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
LARAMIE STOCK YARDS COMPANY, a Corporation, Defendant.

*Petition for Writ of Error.*

And now comes Union Pacific Railroad Company, plaintiff herein, and shows that on or about the 4th day of March, A. D. 1913, the said District Court entered a judgment herein in favor of the defendant and against this plaintiff in which judgment and the proceedings had prior thereto in this cause certain errors were committed, to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States, for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

HERBERT V. LACEY,
JOHN W. LACEY,
*Attorneys for Plaintiff.*

20 Endorsements: No. 729. In the District Court of the United States, District of Wyoming. Union Pacific Railroad Company, a corporation, Plaintiff, vs. Laramie Stock Yards Company, a corporation, Defendant. Petition for writ of error. Lacey & Lacey, Cheyenne, Wyo., for Plaintiff. Filed April 28th, 1913. Charles J. Ohlhaus, Clerk.

21 In the District Court of the United States, Eighth Judicial Circuit, District of Wyoming.

No. 729. At Law.

UNION PACIFIC RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
LARAMIE STOCK YARDS COMPANY, a Corporation, Defendant.

*Order Allowing Writ of Error to the Supreme Court of the United States.*

On this 28th day of April, A. D. 1913, comes the plaintiff by Herbert V. Lacey and John W. Lacey, its attorneys, and files herein and presents to the Court its petition, praying for the allowance of a writ of error and an assignment of errors intended to be urged by it, praying, also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and

that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the court does allow the writ of error upon the plaintiff giving a bond according to law, in the sum of Five hundred dollars, which shall operate as a supersedeas bond.

Dated this 28th day of April, A. D. 1913.

JOHN A. RINER, *Judge.*

22 Endorsements: No. 729. In the District Court of the United States, District of Wyoming. Union Pacific Railroad Company, a corporation, Plaintiff, vs. Laramie Stock Yards Company, a corporation, Defendant. Order allowing writ of error to the Supreme Court of the United States. Filed April 28th, 1913. Charles J. Ohnhaus, Clerk. Lacey & Lacey, Cheyenne, Wyoming, for Plaintiff.

23 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the District Court of the United States for the District of Wyoming, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court, before you, between Union Pacific Railroad Company, plaintiff, and Laramie Stock Yards Company, defendant, a manifest error has happened, to the great damage of the said plaintiff, Union Pacific Railroad Company, as by its complaint appears. We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the 2nd day of June next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 28th day of April in the year of our Lord one thousand nine hundred and thirteen, and of the independ-
24 ence of the United States the one hundred and thirty-six.

[Seal United States District Court, District of Wyoming.]

CHARLES J. OHNHAUS,
*Clerk of the District Court of the United States for the District of Wyoming.*

Allowed by
JOHN A. RINER,
*District Judge.*

24½ [Endorsed:] No. 729. In the District Court of the United States, District of Wyoming. Union Pacific Railroad Company, a corporation, Plaintiff, vs. Laramie Stock Yards Company, a corporation, Defendant. Writ of Error. Filed Apr. 28, 1913. Charles J. Ohmhaus, Clerk. Lacey & Lacey, Cheyenne, Wyo., for Plaintiff.

25 In the District Court of the United States, Eighth Judicial Circuit, District of Wyoming.

No. 729. At Law.

UNION PACIFIC RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
LARAMIE STOCK YARDS COMPANY, a Corporation, Defendant.

*Assignment of Errors.*

The plaintiff in this action, in connection with its petition for writ of error, makes the following assignment of errors, which it avers exists:

First. The court erred in overruling the demurrer of the plaintiff to the answer of the defendant.

Second. The court erred in rendering judgment in said cause in favor of the defendant, whereas the matter should have been entered in favor of the plaintiff.

Wherefore, the plaintiff prays that said judgment be reversed.

HERBERT V. LACEY,
JOHN W. LACEY,
*Attorneys for Plaintiff.*

Endorsements: No. 729. In the District Court of the United States, District of Wyoming. Union Pacific Railroad Company, a corporation, Plaintiff, vs. Laramie Stock Yards Company, a corporation, Defendant. Assignment of Errors. Filed April 28th, 1913, Charles J. Ohmhaus, Clerk. Lacey and Lacey, Cheyenne, Wyoming, for Plaintiff.

26 In the District Court of the United States, Eighth Judicial Circuit, District of Wyoming.

No. 729. At Law.

UNION PACIFIC RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
LARAMIE STOCK YARDS COMPANY, a Corporation, Defendant.

*Bond on Writ of Error to the Supreme Court of the United States.*

Know all men by these presents, that we, Union Pacific Railroad Company, as principal, and T. A. Cosgriff and George E. Abbott,

as sureties, are held and firmly bound unto Laramie Stock Yards Company in the full and just sum of Five Hundred Dollars ($500.00) to be paid to the said Laramie Stock Yards Company, its certain attorneys, successors and assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of April in the year of our Lord one thousand nine hundred and thirteen.

Whereas, lately at a District Court of the United States in a suit depending in said Court, between Union Pacific Railroad Company, plaintiff, and Laramie Stock Yards Company, defendant, a judgment was rendered against the said plaintiff, Union Pacific Railroad Company, and the said plaintiff having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to
27 reverse the judgment in the aforesaid suit, and a citation directed to the said Laramie Stock Yards Company, citing and admonishing it to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington, on the 2nd day of June next

Now, the condition of the above obligation is such that if the said Union Pacific Railroad Company shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to be and remain in full force and virtue.

UNION PACIFIC RAILROAD COMPANY.
By HERBERT V. LACEY.
T. A. COSGRIFF. [SEAL.]
GEORGE E. ABBOTT. [SEAL.]

Signed, sealed and delivered in presence of
JENNIE M. TUPPER.

Approved by
JOHN A. RINER.
*District Judge.*

Endorsements No. 729. In the District Court of the United States, District of Wyoming. Union Pacific Railroad Company, a corporation, Plaintiff, vs. Laramie Stock Yards Company, a corporation, Defendant. Bond on writ of error to the Supreme Court of the United States. Filed April 28th, 1913. Charles J. Olmhaus, Clerk. Lacey & Lacey, Cheyenne, Wyoming, for Plaintiff.

28 In the District Court of the United States, Eighth Judicial Circuit, District of Wyoming.

No. 729. At Law.

UNION PACIFIC RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
LARAMIE STOCK YARDS COMPANY, a Corporation, Defendant.

In this cause I hereby certify that the constitutionality of a certain law of the United States, to-wit, an Act entitled "An Act Legalizing certain conveyances heretofore made by the Union Pacific Railroad Company," approved June 24th, 1912, is drawn in question and that the decision and judgment in said cause sustains the constitutionality of the said Act.

This certificate is made conformably to the Act of Congress in that behalf, and the opinion filed herein is made a part of the record and will be certified and sent up as a part of the proceedings together with this certificate.

Dated this 28th day of April, A. D. 1913.

JOHN A. RINER,
*United States District Judge.*

Endorsements. No. 729. In the District Court of the United States, District of Wyoming. Union Pacific Railroad Company, a corporation, Plaintiff, vs. Laramie Stock Yards Company, a corporation, Defendant. Certificate. Filed April 28, 1913. Charles J. Ohlhaus, Clerk. Lacey & Lacey, Cheyenne, Wyoming, for Plaintiff.

29 In the District Court of the United States, Eighth Judicial Circuit, District of Wyoming.

No. 729. At Law.

UNION PACIFIC RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
LARAMIE STOCK YARDS COMPANY, a Corporation, Defendant.

THE UNITED STATES OF AMERICA, ss:

To Laramie Stock Yards Company, defendant, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, on the 2nd day of June next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Wyoming, wherein Union Pacific Railroad Company is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plain-

tiff in error as in the said writ of error mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand at the City of Cheyenne, in the circuit and district above named, this 28th day of April in
30 the year of our Lord one thousand nine hundred and thirteen.

JOHN A. RINER,
*Judge of the District Court of the United States for the District of Wyoming.*

Service of a copy of the above citation acknowledged this 28th day of April, A. D. 1913.

RODERICK M. MATSON,
T. BLAKE KENNEDY,
*Attorneys for Defendant.*

30½ [Endorsed:] No. 729. In the District Court of the United States, District of Wyoming. Union Pacific Railroad Company, a corporation, Plaintiff, vs. Laramie Stock Yards Company, a corporation, Citation. Filed Apr. 28, 1913. Charles J. Ohmhaus, Clerk. Lacey & Lacey, Cheyenne, Wyo., for Plaintiff.

31 In the District Court of the United States, Eighth Judicial Circuit, District of Wyoming.

No. 729. At Law.

UNION PACIFIC RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
LARAMIE STOCK YARDS COMPANY, a Corporation, Defendant.

*Precipe.*

To the Clerk:

You are requested to make a transcript of record to be filed in the Supreme Court of the United States pursuant to a writ of error allowed in the above entitled cause, and to include in said transcript of record the complete record in said cause.

HERBERT V. LACEY,
JOHN W. LACEY,
*Attorneys for Plaintiff in Error.*

Endorsements: No. 729. In the District Court of the United States, District of Wyoming. Union Pacific Railroad Company, a corporation, Plaintiff, vs. Laramie Stock Yards Company, a corporation. Precipe. Filed Apr. 28th, 1913. Charles J. Ohmhaus, Clerk. Lacey & Lacey, Cheyenne, Wyoming, for Plaintiff.

32 UNITED STATES OF AMERICA,
*District of Wyoming, ss:*

I, Charles J. Ohnhaus, Clerk of the District Court of the United States for the District of Wyoming, within the Eighth Judicial Circuit, do hereby certify the above and foregoing to be a true, correct and complete transcript and copy of the record and proceedings in case No. 729, Union Pacific Railroad Company, a corporation, plaintiff, vs. Laramie Stock Yards Company, a corporation, defendant, lately pending in this court.

Witness my hand and the seal of said court, at the city of Cheyenne, in said district, this ninth day of May, A. D. 1913.

[Seal United States District Court, District of Wyoming.]

CHARLES J. OHNHAUS,
*Clerk U. S. District Court, District of Wyoming.*

33 In the United States District Court, District of Wyoming.

No. 729.

UNION PACIFIC RAILROAD COMPANY, a Corporation,
vs.
THE LARAMIE STOCK YARDS COMPANY, a Corporation.

*Judge's Memorandum.*

This case is before the Court upon a demurrer to the answer. The constitutionality of the act of June 24, 1912, entitled "An Act legalizing certain conveyances heretofore made by the Union Pacific Railroad Company," is the sole question raised by the demurrer. In order that the views of an appellate court may be speedily obtained the demurrer will be overruled and an exception allowed.

Endorsements: No. 729. Union Pacific Railroad Company, a corporation, Plaintiff, vs. Laramie *Stock* Yards Company, a corporation. Judge's memorandum. Filed March 25, 1913. Charles J. Ohnhaus, Clerk.

Endorsed on cover: File No. 23,715. Wyoming D. C. U. S. Term No. 570. Union Pacific Railroad Company, plaintiff in error, vs. Laramie Stock Yards Company. Filed May 23d, 1913. File No. 23,715.

# Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 570

UNION PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR

vs

LARAMIE STOCK YARDS COMPANY

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WYOMING

# BRIEF OF PLAINTIFF IN ERROR

N. H. LOOMIS
Of Counsel

JOHN W. LACEY
HERBERT V. LACEY
Attorneys For Plaintiff In Error

OMAHA PRINTING CO., OMAHA

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1913.

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**No. 570.**

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UNION PACIFIC RAILROAD COMPANY,
*Plaintiff in Error,*

*vs.*

LARAMIE STOCK YARDS COMPANY,
*Defendant in Error.*

**In Error to the District Court of the United States for the District of Wyoming.**

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## BRIEF OF PLAINTIFF IN ERROR.

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### Statement of the Case.

This was an action in ejectment, brought by the plaintiff in error, Union Pacific Railroad Company, hereinafter denominated plaintiff, against the defendant in error, Laramie Stock Yards Company, hereinafter denominated defendant. The land involved is in Albany County, Wyoming, and constitutes a part of the original right of way granted to the Union Pacific Railroad Company by the acts of Congress of 1862 and 1864. [12 Stat. 489, c. 120 and 13 Stat. 356, c. 216.]

The petition alleges that the plaintiff is a corporation existing under the laws of Utah, and is a citizen and resident of Utah; that the defendant is a corporation existing under the laws of Wyoming and is a citizen and resident of that State; that the real estate in controversy is of a value of more than Three Thousand Dollars; that the plaintiff is engaged in the

operation of a railroad from Ogden, Utah, to Council Bluffs, Iowa; that the railroad passes through and across the lands in controversy, describing them; that the right of way of the plaintiff passes through Albany County, Wyoming, and across the lands particularly described and is of the width of four hundred feet, and was originally acquired by The Union Pacific Railroad Company, predecessor in interest of the plaintiff, in the manner following, to-wit: That the said right of way was acquired by said predecessor under and by virtue of a grant of Congress of July 1st, 1862, as contained in an act entitled, "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes." That in Section 2 of said act it is provided:

> "That the right of way through the public lands be and is hereby granted to said company for the construction of said railroad and telegraph line; and that the right, power and authority is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber and other materials for the construction thereof; said right of way is granted to the said railroad to the extent of two hundred feet in width on each side of said railroad as it may pass over the public lands."

It is further alleged that said grant applied to the right of way through Albany County, Wyoming, and to the property in controversy in the action; that the said property at the time of the passage of the act was "public lands," the same being lands to which no right whatever had attached at the time when the grant took effect.

That by virtue of said Act of July 1st, 1862, and acts amendatory thereof and supplemental thereto [12 Stat. 489, c. 120; 13 Stat. 356, c. 216; 14 Stat. 79, c. 159; 15 Stat. 324, c. 127], the Kansas Pacific Railway Company, the Denver-

Pacific Railway and Telegraph Company, and The Union Pacific Railroad Company were consolidated into a new corporation known as "The Union Pacific Railway Company," and the said new corporation thus created became vested with all the rights belonging to the said constituent corporations as they existed at that time. That the original The Union Pacific Railroad Company at the time of the consolidation thus specified had certain liens outstanding against its property, which were thereafter foreclosed by the lien-holders in the manner required by law, and the present plaintiff, through purchase, succeeded to all the rights and property of said The Union Pacific Railway Company, including the four hundred foot right of way, and by virtue of the Congressional Acts in question and of the consolidation and purchase as specified the plaintiff acquired, and now has the legal estate in the following described portion of said right of way, to-wit: Beginning at a point on the south line of Section twenty (20), in Township Sixteen (16) North, Range Seventy-three (73) West of the Sixth Principal Meridian, in Albany County, Wyoming, a distance of fifty (50) feet westerly from and measured at right angles to the center line of the railroad track of Union Pacific Railroad Company, and running thence westerly along said section line to a point two hundred (200) feet westerly from and measured at right angles to the center line of said railroad track; thence northerly on a line parallel with the said railroad track fifty-two hundred and eighty (5280) feet, more or less, to the north line of said section twenty; thence easterly along the said north line to a point fifty (50) feet westerly from and measured at right angles to the center line of said railroad track; thence southerly along a line parallel to the said railroad track fifty-two hundred and eighty (5280) feet, be the same more or less, to the place of beginning.

It is further alleged in the petition that the plaintiff is entitled to the immediate possession of said property, and that its claim and right to such possession is unlawfully and wrongfully denied and withheld by the defendant, and that the defendant unlawfully keeps the plaintiff out of the possession. (Record, pages 1 to 4.)

To this petition the defendant answered, admitting the incorporation and residence of the parties as alleged; admitting that the plaintiff is engaged in the operation of a railroad from Ogden, Utah, to Council Bluffs, Iowa, and that the line of railroad passes through the lands mentioned in the petition. The answer further admits that the right of way in controversy was acquired by plaintiff's predecessors under the Act of Congress as alleged, and that at the time when the same was acquired said lands were public lands to which no right had attached. The answer further admits the consolidation of the various railroads as alleged, and admits the legal succession of the plaintiff to all the rights granted to the said predecessor companies, including the said right of way, and admits that the said four hundred foot right of way includes the real estate in controversy. The answer then denies the legal estate of the plaintiff, alleging as the ground of that denial, "that this defendant is now in possession of said lands, and that it and its immediate grantors for more than ten years immediately prior to the filing of plaintiff's petition herein have been in continuous, quiet, peaceable, undisputed, open and notorious possessin of said lands, holding the same adversely to all persons and particularly to the plaintiff herein, and that by virtue of an Act of Congress of the United States, entitled, 'An Act Legalizing certain conveyances heretofore made by the Union Pacific Railroad Company,' approved June 24th, 1912, the possessin of said lands by this defendant and its grantors as aforesaid, constitutes a bar to plaintiff's action herein." (Record, page 5.)

To this answer the plaintiff demurred. This demurrer was overruled by the court, and the plaintiff declining to plead further, judgment was entered on the answer in favor of the defendant. (Record, pages 7 and 8.)

The action was commenced on January 11th, 1913. By the ruling on the demurrer, it is necessarily held that the statute approved June 24th, 1912, being "An Act Legalizing certain conveyances heretofore made by the Union Pacific Railroad Company," is valid and applies to this case in such way as to bar the right of plaintiff in error to the land in question, although a little more than nine years and five months of the period constituting the adverse possession was prior to the enactment of that statute of June 24th, 1912, and something less than seven months of that occupancy was after the enactment of the statute. The Act of June 24th, 1912, after legalizing and confirming certain deeds and conveyances made by the plaintiff in error and its predecessors, contains the following:

> "That in all instances in which title or ownership of any part of said right of way heretofore mentioned is claimed as against said corporation, or either of them, or the successors or assigns of any of them, by or through adverse possession of the character and duration prescribed by the laws of the State in which the land is situated, such adverse possession shall have the same effect as though the land embraced within the lines of said right of way had been granted by the United States absolutely or in fee instead of being granted as a right of way." 37 U. S. Statutes, at page 138.

In overruling the demurrer, the Court below made a short memorandum opinion, as follows:

> "This case is before the Court upon a demurrer to the answer. The constitutionality of the Act of June 24, 1912, entitled 'An Act Legalizing certain conveyances heretofore made by the Union Pacific Railroad Com-

pany,' is the sole question raised by the demurrer. In order that the views of an appellate court may be speedily obtained the demurrer will be overruled and an exception allowed." (Record, page 15.)

The Court further gave the following certificate as to the question involved, to-wit:

"In this cause I hereby certify that the constitutionality of a certain law of the United States, to-wit, an Act entitled, 'An Act Legalizing certain conveyances heretofore made by the Union Pacific Railroad Company,' approved June 24th, 1912, is drawn in question and that the decision and judgment in said cause sustains the constitutionality of the said Act.

"This certificate is made conformably to the Act of Congress in that behalf, and the opinion filed herein is made a part of the record and will be certified and sent up as a part of the proceedings together with this certificate." (Record, page 13.)

## Specification of Errors.

The plaintiff in error makes the following specification of errors (Record, page 11):

First: The court erred in overruling the demurrer of the plaintiff to the answer of the defendant.

Second: The court erred in rendering judgment in said cause in favor of the defendant, whereas the matter should have been entered in favor of the plaintiff.

## Brief of Argument.

The judgment of the trial court is based upon the assumption that the Act of June 24, 1912, being "An Act Legalizing certain conveyance heretofore made by the Union Pacific Railroad Company," is retroactive in character as applied to this case, and that, construed retroactively, it is constitutional.

The contention of the plaintiff in error is as follows:

I. Prior to the Act of June 24, 1912, title to its right of way granted by Congress could not have been acquired by adverse possession, for by the holding of this court, the entire width of such a right of way "must be presumed to be necessary for the purposes of the railroad, as against a claim by an individual of an exclusive right of possession for private purposes."

II. Title to this property could not have been acquired by adverse possession subsequent to the Act of June 24, 1912, as the requisite statutory period had not elapsed since its passage and approval.

III. Title to this property has not been acquired by virtue of the Act for the following reasons:

1. The Act, in so far as it attempts to convey title by adverse possession, is not retroactive, because it does not by express provision or unavoidable implication, require such construction.

2. If construed as retroactive, it operates immediately and by virtue of itself alone, to take from the plaintiff its vested right and title to the property in controversy and transfer the same to the defendant without due process of law, and is therefore unconstitutional.

## I.

## Prior to the Act of June 24th, 1912, title to the right of way could not have been acquired by adverse possession.

In the case of *Northern Pacific Railroad Company v. Townsend*, 190 U. S. 267, the question of rights acquired by a private party to the right of way of the Northern Pacific Railroad Company, which was held under a grant similar to that here in issue, was before this Court. In deciding the point, this Court used the following language (page 271):

"It is evident that to give such efficacy to a statute of limitations of a state as would operate to confer a permanent right of possession to any portion thereof upon an individual for his private use, would be to allow that to be done by indirection which could not be done directly, for, as said in *Grand Trunk Railroad v. Richardson*, 91 U. S. 454, 468, 'a railroad company is not at liberty to alienate any part of its roadway so as to interfere with the full exercise of the franchises granted.' Nor can it be rightfully contended that the portion of the right of way appropriated was not necessary for the execution of the powers conferred by Congress, for, as said in *Northern Pacific Railroad Co. v. Smith*, 171 U. S. 261, 275, speaking of the very grant under consideration: 'By granting a right of way four hundred feet in width, Congress must be understood to have conclusively determined that a strip of that width was necessary for a public work of such importance.' Neither courts, nor juries, therefore, nor the general public, may be permitted to conjecture that a portion of such right of way is no longer needed for the use of the railroad and title to it has vested in whomsoever chooses to occupy the same. The whole of the granted right of way must be presumed to be necessary for the purposes of the railroad, as against a claim by an individual of an exclusive right of possession for private purposes."

See also:

*Kindred, et al., v. Union Pacific Railroad Company, et al.*, 225 U. S. 582, 597.

*Northern Pacific Railroad Company v. Smith*, 171 U. S. 260, 275.

*Northern Pacific Railroad Company v. Ely*, 197 U. S. 1, 5.

*Stuart v. Union Pacific Railroad Company*, 227 U. S. 342, 353.

## II.

**Title to the property in controversy could not have been acquired by adverse possession subsequent to the Act of June 24th, 1912.**

The Wyoming Statute of Limitations affecting real property is as follows:

> "An action for the recovery of the title or possession of lands, tenements or hereditaments can only be brought within ten years after the cause of such action accrues." Wyoming Compiled Statutes, 1910, section 4295.

Since the act in question was approved June 24th, 1912, it is apparent that sufficient time had not elapsed since such approval for the acquisition of title by adverse possession.

## III.

**Title to this property has not been acquired by adverse possession by virtue of the Act of June 24th, 1912.**

1. THE ACT, IN SO FAR AS IT ATTEMPTS TO CONVEY TITLE BY ADVERSE POSSESSION, IS NOT RETROACTIVE. THE ENTIRE ACT, OMITTING THE TITLE, IS AS FOLLOWS:

> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That all conveyances or agreements heretofore made by the Union Pacific Railroad Company, or the Union Pacific Railway Company, or Union Pacific Railroad Company, or the Leavenworth, Pawnee and Western Railroad Company, or the Union Pacific Railway Company, Eastern Division, or the Kansas Pacific Railway Company, or the successors or assigns of any of them, of or concerning land forming a part of the right of way of the Union Pacific Railroad Company granted by the Government by the Act of Congress of July first, eighteen hundred and sixty-two, entitled 'An Act to aid the construction of a railroad and telegraph line from the Mis-

souri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military, and other purposes'; and also all conveyances or agreements heretofore made by the Union Pacific Railroad Company, or the Union Pacific Railway Company, or the Denver Pacific Railway and Telegraph Company, or the successors or assigns of any of them, of or concerning land forming a part of the right of way between Denver, Colorado, and Cheyenne, Wyoming, of any of said companies granted by or held under any Act of Congress, and all conveyances or agreements confining the limits of said right of way, or restricting the same, are hereby legalized, validated, and confirmed to the extent that the same would have been legal or valid if the land involved therein had been held by the corporation making such conveyance or agreement under absolute or fee-simple title.

"*That in all instances in which title or ownership of any part of said right of way heretofore mentioned is claimed as against said corporation, or either of them, or the successors or assigns of any of them, by or through adverse possession of the character and duration prescribed by the laws of the State in which the land is situated, such adverse possession shall have the same effect as though the land embraced within the lines of said right of way had been granted by the United States absolutely or in fee instead of being granted as a right of way.*

"Sec. 2. That any part of the right of way heretofore mentioned which has been, under the law applicable to that subject, abondoned as a right of way is hereby granted to the owner of the land abutting thereon.

"Sec. 3. That nothing hereinbefore contained shall have the effect to diminish said right of way to a less width than fifty feet on each side of the center of the main track of the railroad as now established and maintained: *Provided*, That nothing herein contained shall be taken or construed to be a recognition of any right in the Union Pacific Railway Company as successor in interest to the Union Pacific Railroad Company."

The first paragraph of the Act, relating to "conveyances or agreements heretofore made by the Union Pacific Railroad Company, etc." can have no bearing upon the present controversy because in the case at bar no contention has been made, and none is possible, that any conveyance or agreement exists, although the language used may well be considered for the purpose of construing the second paragraph of the Act, set forth in italics, the construction of which is the essence of this controversy. It is apparent that this paragraph is intended to have a prospective and not a retrospective operation. Not only is the language subject to that construction, but no other reasonable construction is possible. The intention of Congress in this regard is the more evident from the fact that in the first part of the section it is provided "that all conveyances or agreements *heretofore* made" are hereby legalized. The omission of any such express declaration regarding the past in the second part of the first section is worthy of notice. Had Congress intended to give retrospective effect to this second part, it would have been a very simple matter to have expressly recorded such intention in that part of the Act.

It is well settled that an Act of Congress will not be construed as having a retrospective operation unless the language imperatively demands it. *In United States v. Burr*, 159 U. S. 78, 82, it is said:

> "It is conceded that the general rule is, as stated in *United States v. Heth*, 3 Cranch 398, 413, that 'words in a statute ought not to have a retrospective application unless they are so clear, strong, and imperative, that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied.'"

See also:

> *United States v. American Sugar Co.*, 202 U. S. 563, 577.

This is true, even though the language employed be fairly subject to the other construction.

> "Even though the words of a statute are broad enough in their literal extent to comprehend existing cases, they must yet be construed as applicable only to cases that may hereafter arise, unless the language employed expresses a contrary intention in unequivocal terms."
>
> *Twenty Per Cent. Cases*, 20 Wall., 179, 187.

And the rule is always applied where the result of a retrospective operation would be to injuriously affect an existing status. This though is expressed in *United States v. Heth*, supra, (3 Cranch, 413) as follows:

> "This rule ought especially to be adhered to, when such a construction will alter the pre-existing situation of parties, or will affect or interfere with their antecedent rights, services and remuneration, which is so obviously improper that nothing ought to uphold and vindicate the interpretation, but the unequivocal and inflexible import of the terms, and the manifest intention of the legislature."

The Rule is thus expressed by a distinguished writer upon the subject:

> "A statute will be construed to operate in futuro, only (that is, it will not be given a retroactive effect by construction) unless the legislature has so explicitly expressed its intention to make the act retrospective, that there is no place for a reasonable doubt on the subject."
>
> *Black's Constitutional Law*, (2d Ed.) p. 627, sec 286.

Mr. Chief Justice Marshall, delivering the opinion in *Reynolds v. McArthur*, 2 Pet. 417, said (page 434):

> "It is a principle which has always been held sacred in the United States, that laws by which human action is to be regulated, look forwards, not backwards; and are never to be construed retrospectively, unless the language of the act shall render such construction indispensable."

The question of allowing statutes retroactive or retrospective effect and force was discussed in the case of *Dash v. Van Kleeck*, 7 Johnson 447, 503, by Mr. Chief Justice Kent, as follows:

> "It is a principle in the English common law, as ancient as the law itself, that a statute, even of its omnipotent parliament, is not to have a retrospective effect. *Nova constitutio futuris Bracton and Coke;* and in *Gilmore v. Shuter*, (2 Mod. 310, 228, 2 Inst. 292). This was the doctrine as laid down by *formam debet imponere, non praeteritis.* (Bracton, Lib. 4 fol. 2 Lev. 227, 2 Jones, 108). It received a solemn recognition in the Court of K. B. In that case, a suit was brought after the 24th of June, 1677, upon a parol promise made before that date, but to be performed after that date, and the question was, whether it was void by the statute of frauds and perjuries, which enacted, that 'from and after the 24th of June, 1677, no action should be brought to charge any person upon any agreement made in consideration of marriage, etc., unless such agreement be in writing,' etc. It was admitted that the promise declared on was of the same kind with those mentioned in the statute; but the court agreed unanimously, that the statute was to be read by a transposition of the words, for that it was not to be presumed that the act had a retrospect to take away an action to which the plaintiff was then entitled, and that the other construction would make the act repugnant to common justice. When we consider that this decision was pronounced as early as the reign of Charles II, we are forcibly impressed with the spirit of equity, and the independence of the *English* courts. So again, in the modern case of *Couch v. Jefferies*, (4 Burr, 2460) which was a *qui tam* suit for a penalty, the question was, whether a statute passed after the commencement of the suit, allowing delinquents, by such a day, to pay a stamp duty, and rid themselves of the penalty, should affect the case of a suit already commenced, and the court of K. B. unanimously determined that it could not. 'It can never

be the true construction of this act,' said Lord Mansfield, 'to take away this vested right, and punish the innocent pursuer of it with costs.'

"The maxim in *Bracton* was probably taken from the civil law, for we find in that system the same principle, that the law-giver cannot alter his mind to the prejudice of a vested right. *Nemo potest mutare consilium suum in alterius injuriam.* (Dig. 50, 17, 75.) This maxim of *Papinian* is general in its terms; but Dr. Taylor (Elements of the Civil Law, 168) applies it directly as a restriction upon the law-giver; and a declaration in the Code leaves no doubt as to the sense of the civil law. *Leges et constitutiones futuris certum est dare formam negotiis, non ad facta praeterita revocari, nisi nominatim, et de praeterito tempore, et adhuc pendentibus negotiis cautum sit.* (Cod. 1, 14, 7.) This passage according to the best interpretation of the civilians, relates not merely to future suits, but to future, as contradistinguished from past contracts and vested rights. (Perezii Praelec. h. t.) It is, indeed, admitted, that the prince may enact a retrospective law, provided it be done *expressly;* for the will of the prince, under the despotism of the *Roman* emperors, was paramount to every obligation. Great latitude was anciently allowed to legislative expositions of statutes; for the separation of the judicial from the legislative power was not then distinctly known or prescribed. The prince was in the habit of interpreting his own laws for particular occasions. This was called the *interlocutio principis;* and this, according to Huber's definition, was, *quando principes inter partes loquuntur, et jus dicunt.* (Praelec. Juris Rom. vol. 2, 545.) No correct civilian, and especially no proud admirer of the ancient republic, (if any such then existed), could have reflected on this interference with private rights and pending suits without disgust and indignation; and we are rather surprised to find, that under the violent and irregular genius of the Roman government, the principle before us should have been acknowledged and obeyed to the extent in which we find it. The

fact shows that it must be founded on the clearest justice.

"Our case is happily very different from that of the subjects of Justinian. With us, the power of the lawgiver is limited and defined; the judicial is regarded as a distinct, independent power; private rights have been better understood and more exalted in public estimation, as well as secured by provisions dictated by the spirit of freedom, and unknown to the civil law. Our constitutions do not admit the power assumed by the Roman prince; and the principle we are considering is now to be regarded as sacred. It is not pretended that we have any express constitutional provision on the subject; nor have we any for numerous other rights dear alike to freedom and to justice. An *ex post facto* law, in the strict technical sense of the term, is usually understood to apply to criminal cases, and this is its meaning, when used in the constitution of the United States; yet laws impairing previously acquired *civil* rights are equally within the reason of that prohibition, and equally to be condemned. We have seen that the cases in the *English* and in the *civil law* apply to such rights; and we shall find, upon further examination; that there is no distinction in principle, nor any recognized in practice, between a law punishing a person criminally, for a past innocent act, or punishing him civilly by divesting him of a lawfully acquired right. The distinction consists only in the degree of the oppression, and history teaches us that the government which can deliberately violate the one right, soon ceases to regard the other.

"There has not been, perhaps, a distinguished jurist, or elementary writer, within the last two centuries, who has had occasion to taken notice of retrospective laws, either civil or criminal, but has mentioned them with caution, distrust or disapprobation. Numerous authorities might be cited, but I will select only two, and those no ordinary names. Lord Bacon gives more toleration to retrospective, and particularly to declaratory laws, than can now be admitted, under our more precise and accurate distribution and limitation of the powers of

government; yet he was, at the same time, duly sensible of their danger and injustice. He confines them to special cases, limits them with solicitude, and speaks of them in general with reproach. *Leges quae retrospiciunt raro, et magna cum cautiore sunt adhibendae; neque enim placet Janus in Legibus.—Cavendum tamen est, ne convellantur res judicatae.—Leges delcaratorias ne ordinato, nisi in casibus, ubi leges cum justitia retrospicere possint.* (De Aug. Scient. Lib. 8 c. 3 Aphor. 47-51.) Puffendorf laws down, without any qualification, a general and pointed condemnation of all such laws; he says, 'a law can be repealed by the law-giver, but the rights which have been acquired under it, while it was in force, do not thereby cease. It would be an act of absolute injustice to abolish with a law all the effects which it had produced. Suppose, for example, that there exists a law that the father of a family may dispose of his property by will, the legislature may, without doubt restrain this unlimited right of disposing by will, but it would be unjust to take away the property acquired by will during the existence of the former law.' (*Droit de la Nat.* L. I. c. 6. s. 6.)"

In passing upon a similar question, Mr. Justice Storey, in the case of *Society for the Propagation of the Gospel v. Wheeler*, 2 Gall. 105, (22 Fed. cases 756, 767) uses this language:

"Upon principle, every statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective; and this doctrine seems fully supported by authorities. *Calder v. Bull*, 3 Dall. (3 U. S.) 386; *Dash v. Van Kleeck*, 7 Johns. 477. The reasoning in these authorities, as to the nature, effect and injustice in general, of retrospective laws, is exceedingly able and cogent; and in a fit case, depending upon elementary principles, I should be

disposed to go a great way with the learned argument of Chief Justice Kent."

In the above case at page 768, Mr. Justice Storey also uses this language:

"But if the legislature were to pass an act of limitations, by which all actions upon past disseisins were to be barred, without any allowance of time for the commencement thereof in futuro, it would be difficult to support its constitutionality, for it would be completely retrospective in its operation on vested rights."

In *Calder v. Bull*, et ux., 3 Dallas (3 U. S.) 386, 388, the Court uses this language:

"There are certain vital principles in our free republican governments, which will determine and overrule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to take away that security for personal liberty, or private property, for the protection whereof the government was established. An act of the legislature (for I cannot call it a law), contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority. The obligation of a law, in governments established on express compact, and on republican principles, must be determined by the nature of the power on which it is founded.

"A few instances will suffice to explain what I mean. A law that punished a citizen for an innocent action, or, in other words, for an act, which, when done, was in violation of no existing law; a law that destroys or impairs the lawful private contracts of citizens; a law that makes a man a judge in his own cause; or a law that takes property from A and gives it to B: it is against all reason and justice, for a people to intrust a legislature with such powers; and therefore, it cannot be presumed that they have done it. The genius, the nature and the spirit of our state governments, amount to a prohibition of such acts of legislation; and the general principles of

law and reason forbid them. The legislature may enjoin, permit, forbid and punish; they may declare new crimes; and establish rules of conduct for all its citizens in future cases; they may command what is right, and prohibit what is wrong; but they cannot change innocence into guilt; or punish innocence as a crime; or violate the right of an antecedent lawful private contract; or the right or private property. To maintain that our federal, or state legislature possesses such powers, if they had not been expressly restrained; would, in my opinion, be a political heresy, altogether inadmissible in our free republican governments."

In the recent case of *Winfree, admr. v. Northern Pacific Railway Company*, 227 U. S. 296, on the question whether an act of Congress is to be construed as retrospective, this Court uses the following language (page 301):

"Plaintiff, to support his contention that the act of Congress has retroactive operation, presents a very elaborate argument based on the extensive effect which courts have given to remedial statutes, applying them, it is contended, to the past as well as to the future. The court of appeals met the argument, as we think it should be met, by saying that statutes that had received such extensive application were 'such as were intended to remedy a mischief, to promote public justice, to correct innocent mistakes, to cure irregularities in judicial proceedings, or to give effect to the acts and contracts of individuals according to the intent thereof.' It is hardly necessary to say that such statutes are exceptions to the almost universal rule that statutes are addressed to the future, not to the past. They usually constitute a new factor in the affairs and relations of men, and should not be held to affect what has happened unless, indeed, explicit words be used, or by clear implication that construction be required. It is true that it is said that there was liability on the part of the defendant for its negligence before the passage of the Act of Congress, and the act

has only given a more efficient and a more complete remedy. It, however, takes away material defenses,—defenses which did something more than resist the remedy; they disproved the right of action. Such defenses the statute takes away, and that none may exist in the present case is immaterial. It is the operation of the statute which determines its character. The court of appeals aptly characterized it, and we may quote from its opinion (173 Fed. 66): 'It is a statute which permits recovery, in cases where recovery could not be had before, and takes away from the defendant, defenses which formerly were available—defenses which, in this instance, existed at the time when the contract of service was entered into, and at the time when the accident occurred.' Such a statute, under the rule of the cases, should not be construed as retrospective. It introduced a new policy and quite radically changed the existing law."

2. IF CONSTRUED AS RETROACTIVE, THE ACT OF JUNE 24, 1912, OPERATES IMMEDIATELY AND BY VIRTUE OF ITSELF ALONE, TO TAKE FROM THE PLAINTIFF ITS VESTED RIGHT AND TITLE TO THE PROPERTY IN CONTROVERSY AND TRANSFER THE SAME TO THE DEFENDANT WITHOUT DUE PROCESS OF LAW, AND IS, THEREFORE, UNCONSTITUTIONAL.

The title of the Union Pacific to its 400-foot right of way is a vested property right. It became vested in the grantee immediately upon the passage of the Act of Congress. It was subject to no conditions except those expressly named in the Act. The title so received was such—and it was then, ever since has been and is now held upon such tenure—that, as shown by the cases cited, no adverse right could have been acquired as against the plaintiff and its predecessors to any part of the right of way.

Under the law as it existed prior to the Act of June 24, 1912, the relations between the plaintiff and those to whose rights it succeeded on the one side, and the defendant and

its grantors on the other, were clear and well known. All parties knew, and were bound to know, that any occupation of the right of way by the defendant and its grantors was merely temporary and permissive until such time as the actual use of the right of way might be desired by the plaintiff. There was, therefore, no duty upon the plaintiff or any of its predecessors to take any notice of the occupation of any part of the right of way, nor was there any laches on the part of the plaintiff or any of its predecessors in failing to note the occupancy of this portion of the right of way. All parties knew, and were bound to know, that the title at all times up till the passage of the Act of June 24, 1912, remained absolutely unaffected by any occupancy of the right of way. No such occupancy in any way amounted to a disseisin, or an assertion of title by the occupant, or an admission of title in the occupant by the Railroad Company.

If the statute in question be given a retrospective operation, past acts and omissions will thereby have a different legal effect, in respect to said right of way and title thereto, from what such acts and omissions could possibly have had at the respective dates when they occurred. In other words, by the operation of the statute so construed, property which is today vested in the Union Pacific Railroad Company would, immediately upon the passage and approval of said act, and by virtue thereof alone, be taken from the Union Pacific and vested in others.

That Congress has not the power to accomplish this without the consent of the present owner of the property would seem to be perfectly obvious, and this court has expressedly so held in respect of the very same Acts of Congress, concerning the Union Pacific Railroad Company, to which the statute in question is directed. In the *Sinking Fund Cases*, 99 U. S. 700, at page 718, this Court, speaking through Mr. Chief Justice WAITE, said:

"The United States cannot, any more than a state, interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, but equally with the States they are prohibited from depriving persons or corporations of property without due process of law. They cannot legislate back to themselves, without making compensation, the lands they have given this corporation to aid in the construction of its railroad. Neither can they by legislation compel the corporation to discharge its obligations in respect to the subsidy bonds otherwise than according to the terms of the contract already made in that connection. The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen. *No change can be made in the title created by the grant of the lands, or in the contract for the subsidy bonds, without the consent of the corporation. All this is indisputable.* (Italics ours.)

And in *United States v. Union Pacific*, 160 U. S., page 1, this Court, speaking of the reserved right of Congress to alter or amend the Union Pacific Acts, said (p. 33):

"It would not be competent for the Congress, under the guise of altering and amending the act in question, to impose upon the railroad company duties wholly foreign to the objects for which it was created, or for which governmental aid was given. *Neither could it, by such alteration or amendment, destroy rights actually vested, nor disturb transactions fully consummated.* We may here, not inappropriately, repeat what was said in the *Sinking Fund Cases*, 99 U. S. 700, 718, 719, 720, that 'this power has a limit,' and '*cannot be used to take away property already acquired under the operation of the charter*, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made.'

Again, in the same case: (Here follows the quotation from the *Sinking Fund Cases* hereinabove made.) (Italics ours.)

See also:

*Wallbridge v. Board of Commissioners*, 74 Kan. 341.

But the title to the right of way was a title acquired and a property right vested, not only "under the operation of the charter," but by virtue thereof, and by the very terms of the Act of Congress which constituted such charter.

Titles vested under such Act of Congress could not, without the consent of the grantee or its successor, be legislated back to the United States, or legislated into the ownership of anyone else; nor could the title or tenure created by the grant of said lands or right of way be changed, without such consent, by subsequent Act of Congress.

In the case of the *Proprietors of the Kennebec Purchase v. Laboree, et al.*, 2 Maine (2 Greenleaf) 275, the Court considered the effect of an act of the legislature of Main defining what should constitute adverse possession in such way as to bar the true owner of real estate, and held that the act under consideration in that case was unconstitutional because it was retrospective as well as prospective. At page 288, the Court uses this language:

> "The section is certainly retrospective as well as prospective. It professes to establish principles by which causes, then pending, as well as those which might in future be commenced, should be decided. It professes to operate on *past* transactions, and to give to facts a character which they did not possess at the time they took place; and to declare that in the trial of causes *depending on such facts*, they shall be considered and allowed to operate in the decision of such causes, according to their *new character*. It professes to settle rights and titles depending on laws as they existed for a long series of years *before* the act was passed, by new principles, which, for the first time, are introduced by its

provisions. It professes to change the nature of a disseisin, and of those acts which constitute a disseisin, and thereby subject the true owner of the lands to the loss of them, by converting into disseisin, by *mere legislation*, those acts which, at the time the law was passed, did not amount to a disseisin. It professes to punish the rightful owner of lands, by barring him of his right to recover the possession of them, when, by the existing laws, he was not barred, nor liable to the imputation of any *laches* for not sooner ejecting the wrongful possessor."

(The italics are those of the original opinion.)

The above case is followed and the reasoning applied by this Court in *Webster v. Cooper*, 14 Howard 488.

The case of *Thistle et al. v. The Frostburg Coal Company*, 10 Maryland 129, 144, is similar to the one last above quoted. In that case the Court says:

"It is clearly not within the scope of the legislative power to give to a law the effect of taking from one man his property and giving it to another, by any new rule of tenure, retroactive in its character. Therefore, the legislature could not say, by retroactive act, that the mere possession of a *tort feasor*, without actual enclosures, could divest the real owner of his title, and the reason is, that the law having been different, the real owner relied upon it as his protection, and took no steps, as he might otherwise have done, to defeat a result which could not have been foreseen under the law, as it stood previous to the new rule. If a party should permit another to occupy his land by enclosures, under an adverse claim, for more than twenty years, his title is gone. This result, because the law announces, that every man holds his land subject to have his title defeated in the manner indicated, and if he does not guard against such a contingency it is his own fault. On the other hand, the law has been, previous to the act of 1852, that occupation of land by a wrong doer, without enclosures, would have no effect upon the title of the real owner, and hence the

law imposed upon the latter no obligation to defeat such wrongful possession in order to protect his rights, as it did in the case of possession accompanied by enclosures. Hence, as we have said, it was not in the power of the legislature to change this rule of law, so far as to give it a retroactive operation, because it would virtually be taking the land of one man, held by good legal title, and giving it to another, who the law has said had none."

In the case of *Osborn v. Jaines*, 17 Wis. 592, the Supreme Court of that State holds that a statute of limitations operating immediately so as to bar existing causes, is unconstitutional.

In the case of *Fletcher v. Peck*, 6 Cranch 87, 135, Mr. Chief Justice MARSHALL, speaking for the Court, uses this language:

"It may well be doubted, whether the nature of society and of government does not prescribe some limits to the legislative power; and if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation?"

In the case of *Sturges v. Crowninshield*, 4 Wheat. 122, 206, this Court uses the following language:

"By way of analogy, the statutes of limitations, and against usury, have been referred to in argument; and it has been supposed, that the construction of the constitution, which this opinion maintains, would apply to them also, and must, therefore, be too extensive to be correct. We do not think so. Statutes of limitations relate to the remedies which are furnished in the courts. They rather establish, that certain circumstances shall amount to evidence that a contract has been performed, than dispense with its performance. If, in a state where six years may be pleaded in bar to an action of *assumpsit*, a law should pass declaring that contracts already in existence, not barred by the statute, should be construed to be

within it, there could be little doubt of its unconstitutionality."

In the case of *Sohn v. Waterson*, 17 Wallace 596, 599, in passing upon a statute of limitations of the State of Kansas, this Court uses this language:

"A statute of limitations may undoubtedly have effect upon actions which have already accrued as well as upon actions which accrue after its passage. Whether it does so or not will depend upon the language of the act, and the apparent intent of the legislature to be gathered therefrom. When a statute declares generally that no action, or no action of a certain class shall be brought, except within a certain limited time after it shall have accrued, the language of the statute would make it apply to past actions as well as to those arising in the future. But if an action accrued more than the limited time before the statute was passed a literal interpretation of the statute would have the effect of absolutely barring such action at once. It will be presumed that such was not the intent of the legislature. *Such an intent would be unconstitutional.* To avoid such a result, and to give the statute a construction that will enable it to stand, courts have given it a prospective operation. In doing this, three different modes have been adopted by different courts. One is to make the statute apply only to causes of action arising after its passage. But as this construction leaves all actions existing at the passage of the act, without any limitation at all (which, it is presumed, could not have been intended), another rule adopted is, to construe the statute as applying to such existing actions only as have already run out a portion of the statutory time, but which still have a reasonable time left for prosecution before the statutory time expires—which reasonable time is to be estimated by the court—leaving all other actions accruing prior to the statute unaffected by it. The latter rule does not seem to be founded on any better principle than the former. It still leaves a large class of actions entirely unprovided with any limitation

whatever, or, as to them, is unconstitutional, and is a more arbitrary rule than the first. A third construction is that which was adopted by the court below in this case, and which we regard as much more sound than either of the others. It was substantially adopted by this court in the cases of *Ross* v. *Duval*, [13 Pet. 62] and *Lewis v. Lewis*, [7 How. 778]. In those cases certain statutes of limitation—one in Virginia and the other in Illinois—had originally excepted from their operation non-residents of the State, but this exceptions had been afterwards repealed; and this court held that the non-resident parties had the full statutory time to bring their actions after the repealing acts were passed, although such actions may have accrued at an earlier period. 'The question is,' says C. J. TANEY, (speaking in the latter of the cases just cited), 'from what time is this limitation to be calculated? Upon principle, it would seem to be clear, that it must commence when the cause of action is first subjected to the operation of the statute, unless the legislature has otherwise provided.' It is true, that in the subsequent case of *Murray v. Gibson*, [15 How. 421], this court followed the decisions of the Supreme Court of Mississippi in its construction of a statute of that State, and held that it applied only to actions accruing after the statute was passed. But that decision was made in express deference to those of the State court, which were regarded as authoritative. In the present case we are not bound by any decisive construction of the State court on this point."

(The italics are ours.)

The case of *Herrick v. Boquillas Land and Cattle Company*, 200 U. S. 96, 102, came on appeal from the Supreme Court of Arizona. This court adopts as clearly right the views expressed by the Court below. One of the views of the lower Court so approved is thus stated by this Court:

"In approaching the question whether paragraph 2938 was applicable to the case, the court below assumed that the effect of the finding as to possession by defendants

was to show peaceable an adverse possession by them for the period of ten years. The court, however, decided that under no canon of construction or rule giving a retroactive effect to a new statute of limitation could paragraph 2938 be made to apply to this case. Thus, suggesting the possible constructions which might be claimed for the paragraph, it was said that if construed as absolutely barring causes of action existing at the time of its passage, it was unconstitutional, citing *Sohn v. Waterson*, 17 Wall. 596."

It seems to follow from the principles laid down in the cases cited that the statute here under consideration must be construed as prospective only, if that be reasonably possible. If the statute be found clearly retroactive, then, under the same authorities, it must be held unconstitutional, as taking from the plaintiff in error its property without due process of law.

The construction given to the act by the Court below is that it is retroactive in character, and that construed retroactively it is constitutional. The Court below applied the statute in such way as to take away the property of the plaintiff and confer it upon the defendant because of possession of the property by the defendant in error prior to June 24th, 1912. This so-called possession prior to the Act of June 24th, 1912, at the time had no effect on the title, and as between the parties under the law had a particular aspect not even threatening against the title of the plaintiff. As construed by the Court, the Act under consideration transmutes this prior possession into an aspect hostile and threatening and immediately ripens it into title adverse.

NORTHERN PACIFIC RY. CO. v. ELY DISTINGUISHED.

The case of *Northern Pacific Ry. Co. v. Ely*, 197 U. S. 1, does not seem to be in point. The statute in that case vali-

dated certain conveyances of the Railroad Company, and was held to operate retrospectively. The vital difference is that the statute there construed contained a provision that it should have no validating force until accepted in writing by the company. 33 Stat. 538, c. 1782. The written acceptance was filed July 7, 1904. The Railroad Company therefore could not claim that it was deprived of its property without due process of law, because it had accepted and assented to every transfer within the terms of the Act.

In the case at bar, the Act as construed by the judgment, by its own force and without the assent of the plaintiff, seizes that which at the time of the enactment was plaintiff's property, and transfers it to the defendant.

We submit:

First: That the statute of June 24th, 1912, is not retroactive as to the case at bar.

Second: If that statute must be construed as retroactive as to this case, then it is unconstitutional.

In either event, we submit that the Court below erred in overruling the demurrer, and that the judgment and proceedings should be in all things reversed.

JOHN W. LACEY,
HERBERT V. LACEY,
*Attorneys for Plaintiff in Error.*

N. H. LOOMIS,
*Of Counsel.*

# In the Supreme Court of the United States

OCTOBER TERM, 1913

No. 570

UNION PACIFIC RAILROAD COMPANY,
*Plaintiff in Error,*

vs.

LARAMIE STOCK YARDS COMPANY,
*Defendant in Error.*

# BRIEF OF DEFENDANT IN ERROR

RODERICK N. MATSON,
T. BLAKE KENNEDY,
*Attorneys for Plaintiff in Error.*

The S. A. Bristol Co., Printers and Binders, Cheyenne

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# Brief of Defendant in Error

RODERICK N. MATSON,
T. BLAKE KENNEDY,
*Attorneys for Plaintiff in Error.*

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# Brief of Defendant in Error

## STATEMENT OF THE CASE

The brief of plaintiff in error filed herein gives a correct statement of the case, and the questions involved.

## BRIEF OF ARGUMENT

The issues of this case challenge the constitutionality of the Act of Congress approved June 24th, 1912, validating conveyances and agreements, of the Pacific Railroad Companies and their successors, of portions of their rights of way heretofore granted by Congress, and specifically providing for the application of the well known rules of adverse possession and abandonment to that right of way. The basis for this Act on the part of Congress was undoubtedly the repeated rulings of the United States Supreme Court, that the Pacific Railroad Companies and their successors under the Act of Congress creating them, had no power to alienate by deed of conveyance or otherwise any portion of their rights of way granted under said Acts, and that neither could any person acquire any right to, or interest in any portion of said right of way as against said Railroad Companies under the various State Statutes providing for the acquiring of title either by adverse possession or abandonment.

The history of the Pacific Railroad Acts is too well known, and has been too frequently reviewed by this Court to need further rehearsal in the discussion of the issues in this case. Suffice it to say, that in order to secure transcontinental railroads uniting the Atlantic with the Pacific

seaboards, the United States Government saw fit to create railroad corporations, and extended to them rights of way across the public domain, grants of large tracts of public lands, and otherwise by the issuance of bonds, etc., aided them in the undertaking. The right of way granted to these original corporations was a strip two hundred feet wide on each side of the main track, making a right of way four hundred feet in width.

As time passed and these railroads grew into the great traffic carriers of the country, throughout the entire length of their lines, it was evidently found impracticable to maintain a right of way of the width originally granted, for the companies themselves began to execute conveyances of portions of their rights of way to various parties, to establish their fences at a boundary point fifty feet distant from the main track on either side, as well as to abandon portions of these rights of way.

Under these circumstances the people accepted the affirmative acts and passive permissions on the part of the railroad companies as binding upon said companies, and began to improve the property so presumed to have been acquired. In many instances large and expensive improvements were made by parties other than the railroad companies upon lands coming within the original rights of way of four hundred feet without objection on the part of said railroad companies, and in many cases said companies attempted to convey or release all their interest in these rights of way so occupied.

The decisions of this Court as before stated, and these conditions involving large property interests, brought the matter sharply to the attention of Congress, and led to the passage of the Act in controversy as in the nature of remedial legislation.

In the Act of June 24th, 1912, Congress has attempted to enact legislation which will ratify and confirm the affirmative acts of the railroad companies in attempting to alienate portions of their rights of way, and make effective the laws of the various states through which said railroads pass, governing the title sought to be acquired by adverse

possession as against the title of the railroad companies in said rights of way.

The present case is one fairly and squarely involving the open and notorious possession by defendant in error, and adverse to plaintiff in error, of a portion of the original right of way of four hundred feet in width granted to the Union Pacific Railroad Company, of which defendant in error is the successor, located in the County of Albany, in the State of Wyoming, for the period prescribed by the Statutes of said State.

There is no question involved as to the succession of the plaintiff in error, to the original grant by Congress, and the demurrer filed by plaintiff in error to the answer of defendant in error in the Court below admits the open and notorious possession in controversy, adverse to the plaintiff in error, for the period prescribed for acquiring title by adverse possession by the Statutes of the State of Wyoming.

It is admitted as stated by plaintiff in error in its brief, that prior to the passage of the Act in controversy, title by adverse possession could not be acquired as against the plaintiff in error in its original right of way grant, and it is further admitted that title could not have been acquired by adverse possession subsequent to the passage of the Act.

THE ACT IN CONTROVERSY IS AN ALTERATION OR AN AMENDMENT OF THE ORIGINAL GRANTS TO THE PACIFIC RAILROAD COMPANIES, AND AS SUCH VIOLATES NO CONSTITUTIONAL PROVISION.

The Act reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That all conveyances or agreements heretofore made by the Union Pacific Railroad Company,

or the Union Pacific Railway Company, or Union Pacific Railroad Company, or the Leavenworth, Pawnee and Western Railroad Company, or the Union Pacific Railway Company, Eastern Division, or the Kansas Pacific Railway Company, or the successors or assigns of any of them, of or concerning land forming a part of the right of way of the Union Pacific Railroad Company granted by the Government by the Act of Congress of July first, eighteen hundred and sixty-two, entitled, 'An Act to aid the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military, and other purposes'; and also all conveyances or agreements heretofore made by the Union Pacific Railroad Company, or the Union Pacific Railway Company, or the Denver Pacific Railway, and Telegraph Company, or the successors or assigns of any of them, of or concerning land forming a part of the right of way between Denver, Colorado, and Cheyenne, Wyoming, of any of said companies granted by or held under any Act of Congress, and all conveyances or agreements confining the limits of said right of way, or restricting the same, are hereby legalized, validated, and confirmed to the extent that the same would have been legal or valid if the land involved therein had been held by the corporation making such conveyance or agreement under absolute or fee-simple title.

"That in all instances in which title or ownership of any part of said right of way heretofore mentioned is claimed as against said corporation, or either of them, or the successors or assigns of any of them, by or through adverse possession of the character and duration prescribed by the laws of the State in which the land is situated, such adverse possession shall have the same effect as though the land embraced within the lines of said right of way had been granted by the United States absolutely or in fee instead of being granted as a right of way.

"Sec. 2. That any part of the right of way heretofore mentioned which has been, under the law applicable to that subject, abandoned as a right of way is hereby granted to the owner of the land abutting thereon.

"Sec. 3. That nothing hereinbefore contained shall have the effect to diminish said right of way to a less width than fifty feet on each side of the centre of the main track of the railroad as now established and maintained: Provided, That nothing herein contained shall be taken or construed to be a recognition of any right in the Union Pacific Railway Company as successor in interest to the Union Pacific Railroad Company."

The Act of July 1st, 1862, 12 Statutes at Large 497, contains the following provision:

"Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend or repeal this Act."

And again in the Act of July 2nd, 1864, 12 Statutes at Large 365, we find the following language.

"And be it further enacted, that Congress may at any time alter, amend or repeal this Act."

This is the language of the original Pacific Railroad Acts, by which we observe that Congress reserved the right to alter or amend the original grant of rights of way to these companies, and the Act in controversy is in substance an amendment to the original Acts, in that it alters and restricts the width of the original right of way granted in cases where the grantee by its acts of commission and omission has brought about certain conditions, as in the case at bar, by permitting defendant in error to hold possession of the lands in controversy adverse to itself for a long period of time, and such a period as would under the Statutes of Wyoming give the defendant in error a title to the land

by adverse possession, were the title of the railroad company one in fee instead of a right of way.

Thus we see that the original railroad companies, their successors, stock holders, bond holders and all persons having business with said companies, and the public generally, had notice that these original acts were subject to alteration, amendment and repeal. These companies and their successors cannot now be heard to complain that Congress should amend said original grant in certain cases, in which the original right of way is reduced from two hundred feet to fifty feet on each side of its track.

Congress had the right to, and did take notice that these railroad companies had silently assented for long periods of time to the absolute and undisputed possession of large portions of this right of way, had removed in many instances their fences, making a right of way of fifty feet on each side of their main track, and in other cases erecting in the first instance their fences along a line fifty feet distant from either side of said track.

The main difficulty with the original question of adverse possession being effective as against a right of way, was that the right of way was merely in the nature of a grant or license to use for certain purposes a limited portion of the public domain. It was not a title to said portion in fee-simple, and when the grantee had used said land so granted for the carrying out of the purposes of the grant, its right to the same would thereby end, and it could by no affirmative or permissive act of its own alienate said grant. It was merely a right to use, and whenever that right to use should lapse by disuse, or for any reason become forfeited, it would then revert to the original grantor. The effect therefore of the Act of June 24th, 1912, was to say, that whenever these railroads have by their own acts indicated that they only require for the purpose of their corporate ends a right of way one hundred feet in width, that they thereby forfeit their right to the additional width, and the grantor may then do with it as he desires.

The United States has by this Act stated that those persons who have held portions of this right of way outside

of a space fifty feet in width on either side of the main track for a period of time, which in the state where said controversy arises shall amount to adverse possession, that the title by adverse possession may be invoked as against such right of way.

Congress has taken notice of the fact that the railroad companies to whom the original rights of way were granted, and their successors, have consistently and continuously used but one hundred feet of that right of way.

In some instances said railroad companies have used the entire right of way of four hundred feet in width, and in such cases Congress by this Act has in no way attempted to amend or alter the original grant, by reducing the width in cases where such entire width has been used. Such an Act on the part of Congress might be an invasion of vested rights and a violation of contract relations. Congress has simply said that wherever this right of way has not been used for the purpose of carrying into effect the corporate acts of the railroad, that the railroad by its own act, and by its laches, loses its right to a portion of the original grant. The parties in interest in the case are the railroad company, the party claiming adverse possession, and the United States, the latter being the original owner in fee, and having granted a limited right to the railroad. The party claiming the adverse possession has held the possession of the land for a long period of time with the consent of the railroad, and the owner in fee now steps in, and through its Congress consents that this implied agreement between the parties shall become effective by operation of law. The only element lacking in the first instance to make the title by adverse possession effective, is the consent of the fee owner, and this element is supplied by the Act in controversy.

The right of Congress to alter, amend and repeal franchises where the power is reserved has been frequently passed on by the Courts.

In the case of Miller vs. State, 15 Wallace 478-498, the Court says:

"It may safely be affirmed that the reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant or to secure the due administration of its affairs so as to protect the rights of stockholders and of creditors, and for the proper disposition of the assets."

In the case of Holyoke vs. Lyman, 15 Wallace 500-519, the Court says:

"Vested rights, it is conceded, cannot be destroyed or impaired under such a reserved power, but it is clear that the power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant and to protect the rights of the public and of the corporators, or to promote due administration of the affairs of the corporation."

And again in Tomlinson vs. Jessup, 15 Wallace 454-459, in the same connection the Court says:

"The reservation affects the entire relation between the state and the corporation, and places under legislative control all rights, privileges and immunities derived by its charter directly from the state."

In Railroad Company vs. Maine, 96 U. S. 499-510, the Court says:

"By the reservation * * * * * * the state retained the power to alter it in all particulars constituting the grant to the new company, formed under it, of corporate rights, privileges and immunities."

In Shields vs. Ohio, 95 U. S. 319-324, the Court says:

"The alterations must be reasonable; they must be made in good faith, and be consistent with the scope and objects of the act of incorporation. Sheer oppression and wrong cannot be inflicted under the guise of amendment or alteration."

This doctrine is reviewed and fully confirmed in the Sinking Fund Cases, 99 U. S. 700, in which the original railroad Acts, and the power of Congress to alter and amend, were under consideration.

In the case of Calder vs. People of the State of Michigan, 218 U. S. 591, decided by this Court in December 1910, it is held that the right to repeal the corporate charter reserved to the legislature, and thereafter exercised is not violative of the constitutional rights of bond holders of that corporation.

In the case of Looker vs. Maynard 179 U. S. 46-52, the Court says:

> "The effect of such a provision, whether contained in an original act of incorporation, or in a constitution or general law subject to which a charter is accepted, is, at the least to reserve to the legislature the power to make any alteration or amendment of a charter subject to it, which will not defeat or substantially impair the object of the grant, or any right vested under the grant, and which the legislature may deem necessary to carry into effect the purpose of the grant, or to protect the rights of the public or of the corporation, its stockholders or creditors, or to promote the due administration of its affairs."

In applying the law as laid down by the Supreme Court to the case at bar, we contend that no vested right has been impaired, or contract obligation violated, as there has been no attempt on the part of Congress to pass a law, which would permit the taking away from the railroad company any portion of its right of way which had been put by it to its corporate uses.

CONSIDERED AS A RETROSPECTIVE ACT IT WAS INTENDED BY CONGRESS AS SUCH, AND CONTRAVENES NO CONSTITUTIONAL PROVISION.

If the act be considered independently of an alteration or amendment of the original grant, it may be admitted that the law will operate retrospectively if held applicable to the case at bar, in that it is claimed by defendant in error that the period prescribed by the Wyoming Statutes for the acquiring of title by adverse possession, has already run. It is further contended that such was the intention of Congress in the light of the circumstances which preceded the passage of the Act. As stated in the outset in the discussion of the history of the so-called Pacific Railroad Acts, it was found that large interests had been acquired by persons within the limits of the original four hundred foot right of way with the affirmative or passive consent of the railroad companies, and it was with this in view, and as a legislative aid to an unfortunate condition, and a relief to those people who had been lulled into apparent security in their property interests, on account of the action, or lack of action, on the part of the railroads, that the Act in controversy was passed.

If we examine the Act itself with a view of arriving at the intention of Congress in passing it, we find that it is composed of four constituent parts. The first legalizes all conveyances and agreements concerning their rights of way heretofore made by the Pacific Railroad Companies. The second provides that adverse possession in the several states through which these railroads pass shall be effective as against these rights of way. The third provides that rights of way which have been abandoned shall be the property of the owner of the abutting land. And the fourth, that nothing in the Act contained shall diminish the right of way of these railroads to a width less than fifty feet on each side of the center of the main track.

The first part of the Act is in its very nature retrospective, in that it legalizes and validates past conveyances

and agreements. The third part is likewise retrospective, in that it summarily disposes of those portions of the rights of way heretofore abandoned. The fourth part recognizes on the part of Congress the necessity for the transaction of its business of a right of way at least one hundred feet in width, and affirmatively fixes this width as the future right of way for these companies, except in cases where they have placed in use and still maintain for corporate uses the greater width of four hundred feet. All these divisions of the Act specifically point to retrospective operation, and yet by the argument of Counsel for plaintiff in error, we are to believe that the second part of the Act relating to adverse possession shall only operate prospectively. This portion should follow the general trend of the Act, which is persuasive of the intention of Congress that the whole Act should operate retrospectively.

If the construction be given the Act as contended for by Counsel for plaintiff in error, that it operate only prospectively, then we find this almost absurd situation. At any time within the next ten to twenty years, depending upon the statutes governing adverse possession in the various states, the railroad company may go into Court and recover possession of the original four hundred foot right of way, exclusive of the one hundred feet now in use, and those interests which are thereby affected are without standing in Court, and have no defense which may be maintained. Such a construction would clearly be against the public interest, and the Act itself would avail nothing, except a notice to the railroad that it must within the succeeding twenty years proceed to take some action against those interests which have been occupying certain portions of this right of way unforbidden by the company or assented to by it.

It has been repeatedly decided by this Court that a Retrospective Law is not in itself unconstitutional.

In the case of Satterlee vs. Matthewson, 2 Peters 380-413, it is held that:

"If the effect of the Statute in question be not to impair the obligation of either of those contracts, and none other appear upon this record, is there any other part of the Constitution of the United States to which it is repugnant? It is said to be retrospective. Be it so; but retrospective laws, which do not impair the obligation of contracts, or partake of the character of *ex post facto* laws are not condemned or forbidden by any part of that instrument."

In the case of Curtis vs. Whitney 80 U. S. 68-70, the Court says:

"That a statute is not void because it is retrospective has been repeatedly held by this Court."

In the case of Charles River Bridge vs. Warren Bridge, 11 Peters 420-540, the Court says:

"The Constitution of the United States does not prohibit the states from passing retrospective laws generally, but only *ex post facto* laws."

In the case of Watson vs. Mercer, 8 Peters 88-110, the Court says:

"As to the first point, it is clear that this Court has no right to pronounce an act of the State Legislature void, as contrary to the Constitution of the United States, from the mere fact that it devests antecedent vested rights of property. The Constitution of the United States does not prohibit the states from passing retrospective laws generally, but only *ex post facto* laws."

In the case of Baltimore and Susquehanna Railroad Company vs. Nesbit, 10 Howard 395-401, the Court says:

"That there exists a general power in the state governments to enact retrospective or retroactive laws, is a point too well settled to admit of question

at this day. The only limit upon the power in the states by the Federal Constitution, and therefore the only source of cognizance or control with respect to that power existing in this Court, is the provision that these retrospective laws shall not be such as are technically *ex post facto*, or such as impair the obligation of contracts."

In the case of Blount vs. Windley, 95 U. S. 173-180, the Court says:

"It may be said that this legislation is retroactive; and, as applied to the case before us, it is so. But there is no constitutional inhibition against retrospective laws. Though generally distrusted they are often beneficial, and sometimes necessary. Where they violate no provision of the Constitution of the United States, there exists no power in this Court to declare them void."

In the case of Calder vs. Bull 3 U. S. 386-391, the Court says:

"In my opinion, the true distinction is between *ex post facto* laws and retrospective laws. Every *ex post facto* law must necessarily be retrospective; but every retrospective law is not an *ex post facto* law: The former, only are prohibited. Every law that takes away, or impairs, rights vested agreeably to existing laws, is retrospective, and is generally unjust and may be oppressive; and it is a good general rule, that a law should have no retrospect: but there are cases in which laws may justly, and for the benefit of the community, and also of individuals, relate to a time antecedent to their commencement * * * *."

Thus it is seen that laws retrospective in their nature do not offend against the Constitution, but have frequently been held to be beneficial in their nature, and to operate

for the general good of the community. There are undoubtedly laws retrospective in their nature which have been held to violate the provisions of the United States Constitution, and it was originally announced by the United States Supreme Court, in the case of Watson vs. Mercer, *supra*, that the Court should not declare legislation void as contrary to the Constitution of the United States from the mere fact that it devested antecedent vested rights of property. This doctrine however, appears to have been somewhat modified, for in the case of United States vs. Union Pacific Railroad Company 160 U. S. 1-33, the Court says:

> "It would not be competent for Congress, under the guise of altering and amending the act in question, to impose upon the railroad company duties wholly foreign to the objects for which it was created, or for which governmental aid was given. Neither could it, by such alteration or amendment destroy rights actually vested, nor disturb transactions fully consummated."

In the discussion and determination, however, of what may be considered vested rights, or contract obligations, this Court has taken a wide range, and has repeatedly held many rights which at first glance would seem to be vested rights, not to be rights of this character, and many contracts, charters and grants not to be violated by legislative enactments. For instance, this Court has frequently held that legislatures may pass laws regulating the conduct and operation of corporations then in existence, and that such statutes do not devest vested rights or impair contract obligations.

In the case of Munn vs. Illinois, 94 U. S. 113-134, the Court says:

> "Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct may be changed at the will, or even the whim of the

legislature, unless prevented by constitutional limitations. Indeed the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances. To limit the rate of charge for services rendered in a public employment, or for the use of property in which the public has an interest, is only changing a regulation which existed before. It establishes no new principle in the law, but only gives a new effect to an old one."

The question of vested rights is closely associated with the question of the enjoyment of contracts, which are guaranteed by constitutional provision, and as to what may be considered within the scope of legislative powers, so far as impairing contract obligations under constitutional restriction is concerned, the field is very broad.

In the case of Spring Valley Water Works vs. Schottler, 110 U. S. 347, it has been held that laws requiring gas, water, and other corporations to supply customers at fixed prices do not impair contract obligations given under municipal charters to said corporations.

In the case of Morley vs. Lake Shore and M. S. Railway Company, 146 U. S. 162, it is held that reducing the rate of interest upon judgments previously obtained in courts does not violate the contract clause of the Constitution.

In the case of Curtis vs. Whitney, *supra*, the Court says:

"Nor does every statute which affects the value of a contract impair its obligation. It is one of the contingencies to which parties look in making a large class of contracts, that they may be affected in many ways by State and National legislation. For such legislation demanded by the public good, however it may retroact on contracts previously made, and enhance the cost and difficulty of performance, or diminish the value of such performance to the other party, there is no restraint in the Federal Constitution, so long as the obligation of performance remains in full force."

Applying this rule to the case at bar it is evident that the Act in controversy was passed by Congress for the public good, and while in a way it might be said to enhance the difficulty of performance, in that in the far distant future the railroad company might have use for a right of way four hundred feet in width, and yet the contract between the Government and the railroad in the nature of its original charter and grant remains in full force by virtue of the terms of the Act guaranteeing to the railroad a right of way not less than one hundred feet in width.

An interesting case is Pearsall vs. Great Northern Railroad Company, 161 U. S. 646-673-676. In that case the evidence shows that very full franchises were granted to a railroad corporation to construct feeder lines, to buy other lines of railway, to absorb railway lines running in the same general direction as its own or branch lines, and to acquire stock of other companies, or to consolidate with any other company. Such legislative grant was accepted by the company, and subsequently an act was passed by the legislature prohibiting the consolidation, lease or purchase by any railroad of the stock, property or franchises of any parallel or competing line. This law was attacked under the contract clause of the Constitution and sustained, the Court saying after a review of many decisions of the United States Supreme Court involving the construction of the statutes controlling grants to corporations:

> "But where the charter authorizes the company in sweeping terms to do certain things which are unnecessary to the main objects of the grant, and not directly and immediately within the contemplation of the parties thereto, the power so conferred, so long as it is unexecuted, is within the control of the legislature, and may be treated as a license, and may be revoked, if a possible exercise of such power is found to conflict with the interests of the public."

And again,

> "We think the general doctrine, requiring grants

> to corporations to be construed favorably to the public, where there is a reasonable doubt as to the extent of the privilege conferred, may properly be invoked to declare that such privileges shall not be used to the detriment of the public."

It will be seen in the case cited that the act of the legislature absolutely forbidding the exercise of powers originally granted to the corporation, was sustained in the interest of the public, where those powers remain unexecuted. In the case at bar Congress has enacted a law in the interest of the public diminishing the grant to the Pacific Railroad Companies from a right of way as originally granted of four hundred feet to a right of way as amended of one hundred feet, but only as to those portions of the original right of way outside of the one hundred foot width which have remained unused by the companies for long periods of time. In the one case it is an unexecuted power which is restricted, and in the other case an unused or abandoned portion of a right of way. It is difficult to see how the cases differ in any limitations placed upon the companies, so far as carrying out the corporate purposes for which the original grants were given, is concerned.

In the case of L. and N. Railroad Company vs. Kentucky, 161 U. S. 677-700, in a similar case to the one just cited, where there was involved the construction of a statute prohibiting the purchase of a parallel line of railroad under a grant originally given, the Court sums up the situation in the following language:

> "Notwithstanding these cases, the general rule holds good that whatever is contrary to public policy or inimical to the public interests is subject to the police power of the State, and within legislative control, and in the exertion of such power the legislature is vested with a large discretion, which, if exercised bona fide for the protection of the public, is beyond the reach of judicial inquiry."

The cases cited by plaintiff in error to sustain its position are generally those where private interests have been under consideration by the Courts. In the case now before the Court, the interests of the public in connection with a large public corporation are involved, and therefore this case should be governed by the broader rule that the legislature has absolute control in matters of legislation affecting the public interest.

We therefore submit that the act in controversy is an alteration and amendment of the original grants by Congress, in which full power was reserved for such an alteration or amendment; that if considered as a retrospective law, it was so intended by Congress; and that in neither event does it impair vested rights or destroy contract obligations, but was passed for the benefit and protection of the public, communities and individuals, in which cases legislative powers are practically unlimited; and for these reasons the Court below committed no error in over-ruling the demurrer.

RODERICK N. MATSON,
T. BLAKE KENNEDY,
*Attorneys for Defendant in Error*

# UNION PACIFIC RAILROAD COMPANY *v.* LARAMIE STOCK YARDS COMPANY.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WYOMING.

No. 570. Submitted October 14, 1913.—Decided December 1, 1913.

The first rule of construction of statutes is that legislation is addressed to the future and not to the past. This rule is one of obvious justice.

Unless its terms unequivocally import that it was the manifest intent of the legislature enacting it, a retrospective operation will not be given to a statute which interferes with antecedent rights or by which human action is regulated.

The right of way granted under the Land Grant Act of July 1, 1862, was a very important aid to the railroad, and was a present absolute grant subject to no conditions except those absolutely implied, such as construction and user.

The act of June 24, 1912, c. 181, 37 Stat. 138, permitting state statutes of limitation to apply to adverse possession of portions of the right of way granted to the railroad company under the act of July 1, 1862, did not have a retroactive effect. *Sohn* v. *Waterson*, 17 Wall. 596.

Congress did not intend by the act of June 24, 1912, to exercise powers to alter and amend the charters of the railroad companies reserved by the acts of July 1, 1862, and July 2, 1864.

This court will not assume that Congress intends to forfeit or limit any of the rights granted to the transcontinental railroads unless it does so explicitly.

An amendment to an existing charter enacted under the reserved power to alter and amend will not be construed as having a retroactive effect as to vested property rights in absence of clear intent of the legislature enacting it.

THE facts, which involve the construction and application of the Union Pacific Land Grant Act of July 1, 1862, the act of June 24, 1912, and the extent of rights claimed to have been acquired under the latter act by adverse possession in the railroad right of way, are stated in the opinion.

*Mr. John W. Lacey, Mr. N. H. Loomis* and *Mr. Herbert V. Lacey* for plaintiff in error:

Prior to the act of June 24, 1912, title to the right of way could not have been acquired by adverse possession. *Nor. Pac. R. R. Co.* v. *Townsend*, 190 U. S. 267; *Kindred* v. *Un. Pac. R. R. Co.*, 225 U. S. 582, 597; *Nor. Pac. R. R. Co.* v. *Smith*, 171 U. S. 260, 275; *Nor. Pac. R. R. Co.* v. *Ely*, 197 U. S. 1; *Stuart* v. *Un. Pac. R. R. Co.*, 227 U. S. 353.

Under the Wyoming statute of limitations (1910, § 4295) sufficient time had not elapsed since June 24, 1912, for the acquisition of title by adverse possession. Nor has title been acquired by adverse possession by virtue of the act of June 24, 1912. That act, in so far as it attempts to convey title by adverse possession, is not retroactive.

It is apparent that the statute is intended to have a prospective and not a retrospective operation. Not only is the language subject to that construction, but no other reasonable construction is possible. The omission of any express declaration regarding the past is worthy of notice. Had Congress intended to give retrospective effect it would have been a very simple matter to have expressly recorded such intention in that part of the act.

An act of Congress will not be construed as having a retrospective operation unless the language imperatively demands it. *United States* v. *Burr*, 159 U. S. 78, 82; *United States* v. *Am. Sugar Co.*, 202 U. S. 563, 577; *Twenty Per Cent. Cases*, 20 Wall. 179, 187.

This rule is always applied where the result of a retrospective operation would be to injuriously affect an existing status. *United States* v. *Heth*, 3 Cr. 413; Black's Const. Law, 2d ed., p. 627, § 286; *Reynolds* v. *McArthur*, 2 Pet. 417, 434; *Dash* v. *Van Kleeck*, 7 Johnson, 447, 503; *Society* v. *Wheeler*, 2 Gall. 105; *S. C.*, 22 Fed. Cas. 756, 767; *Calder* v. *Bull*, 3 Dall. 386; *Winfree* v. *Nor. Pac. Ry. Co.*, 227 U. S. 296, 301.

If construed as retroactive, the act operates immediately and by virtue of itself alone, to take from the plaintiff its vested right and title to the property in controversy and transfer the same to the defendant without due process of law, and is, therefore, unconstitutional.

Congress has not the power to accomplish this without the consent of the present owner of the property. *Sinking Fund Cases*, 99 U. S. 700, 718; *United States* v. *Un. Pac. R. R. Co.*, 160 U. S. 1, 33. See also *Wallbridge* v. *Commissioners*, 74 Kansas, 341.

Titles vested under act of Congress could not, without the consent of the grantee or its successor, be legislated back to the United States, or legislated into the ownership of anyone else; nor could the title or tenure created by the grant of said lands or right of way be changed, without such consent, by subsequent act of Congress. *Proprietors* v. *Laboree*, 2 Maine (2 Greenleaf), 275, 288; *Webster* v. *Cooper*, 14 How. 488; *Thistle* v. *Frostburg Coal Co.*, 10 Maryland, 129, 144; *Osborn* v. *Jaines*, 17 Wisconsin, 592; *Fletcher* v. *Peck*, 6 Cr. 87, 135; *Sturges* v. *Crowninshield*, 4 Wheat. 122, 206; *Sohn* v. *Waterson*, 17 Wall. 596, 599; *Herrick* v. *Boquillas Land Co.*, 200 U. S. 96, 102.

From the cases cited the statute under consideration must be construed as prospective only, if that be reasonably possible. If the statute be found clearly retroactive, then, under the same authorities, it must be held unconstitutional, as taking from the plaintiff in error its property without due process of law.

*Nor. Pac. Ry. Co.* v. *Ely*, 197 U. S. 1, is not in point. The statute in that case validated certain conveyances of the railroad company, and was held to operate retrospectively because it contained a provision that it should have no validating force until accepted in writing by the company, 33 Stat. 538, c. 1782. The railroad company did file written acceptance and could not claim that it was deprived of its property without due process of law, because it had accepted and assented to every transfer within the terms of the act.

*Mr. Roderick N. Matson* and *Mr. T. Blake Kennedy* for defendant in error:

The act in controversy is an alteration or an amendment of the original grants to the Pacific Railroad Companies, and as such violates no constitutional provision.

Congress had the right to, and did take notice that these railroad companies had silently assented for long periods of time to the absolute and undisputed possession of large portions of this right of way, had removed in many instances their fences, making a right of way of fifty feet on each side of their main track, and in other cases erecting in the first instance their fences along a line fifty feet distant from either side of said track.

The United States has by this act stated that those persons who have held portions of this right of way outside of a space fifty feet in width on either side of the main track for a period of time, which in the State where said controversy arises shall amount to adverse possession, that the title by adverse possession may be invoked as against such right of way.

Congress has taken notice of the fact that the railroad companies to whom the original rights of way were granted, and their successors, have consistently and continuously used but one hundred feet of that right of way.

The right of Congress to alter, amend and repeal

franchises where the power is reserved has been frequently sustained. See *Miller* v. *State*, 15 Wall. 478, 498; *Holyoke* v. *Lyman*, 15 Wall. 500, 519; *Tomlinson* v. *Jessup*, 15 Wall. 454, 459; *Railroad Company* v. *Maine*, 96 U. S. 499, 510; *Shields* v. *Ohio*, 95 U. S. 319, 324; *Sinking Fund Cases*, 99 U. S. 700; *Calder* v. *Michigan*, 218 U. S. 591; *Looker* v. *Maynard*, 179 U. S. 46, 52.

In applying the law as laid down by this court no vested right has been impaired, or contract obligation violated; nor has there been any attempt on the part of Congress to pass a law, which would permit the taking away from the railroad company any portion of its right of way which had been put by it to its corporate uses.

Considered as a retrospective act it was intended by Congress as such, and contravenes no constitutional provision.

The construction contended for by counsel for plaintiff in error, that it operates only prospectively, makes an almost absurd situation. At any time within the next ten to twenty years, depending upon the statutes governing adverse possession in the various States, the railroad company may go into court and recover possession of the original four hundred foot right of way, exclusive of the one hundred feet now in use, and those interests which are thereby affected are without standing in court, and have no defense which may be maintained. Such a construction would clearly be against the public interest, and the act itself would avail nothing, except a notice to the railroad that it must within the succeeding twenty years proceed to take some action against those interests which have been occupying certain portions of this right of way unforbidden by the company or assented to by it.

A retrospective law is not in itself unconstitutional. *Satterlee* v. *Matthewson*, 2 Pet. 380, 413; *Curtis* v. *Whitney*, 13 Wall. 68, 70; *Charles River Bridge Case*, 11 Pet. 420, 510; *Watson* v. *Mercer*, 8 Pet. 88, 110; *Balt. & Susq. R. R.*

*Co.* v. *Nesbit*, 10 How. 395, 401; *Blount* v. *Windley*, 95 U. S. 173, 180; *Calder* v. *Bull*, 3 Dall. 386, 391.

Laws retrospective in their nature do not offend against the Constitution, but have frequently been held to be beneficial in their nature, and to operate for the general good of the community. *United States* v. *Un. Pac. R. R. Co.*, 160 U. S. 1, 33; *Munn* v. *Illinois*, 94 U. S. 113, 134.

The question of vested rights is closely associated with the question of the enjoyment of contracts, which are guaranteed by constitutional provision; and as to what may be considered within the scope of legislative powers, so far as impairing contract obligations under constitutional restriction is concerned, the field is very broad. *Spring Valley Water Works* v. *Schottler*, 110 U. S. 347; *Morley* v. *Lake Shore Ry. Co.*, 146 U. S. 162; *Curtis* v. *Whitney*, *supra*.

It is evident that the act in controversy was passed by Congress for the public good, and while in a way it might be said to enhance the difficulty of performance, in that in the far distant future the railroad company might have use for a right of way four hundred feet in width, and yet the contract between the Government and the railroad in the nature of its original charter and grant remains in full force by virtue of the terms of the act guaranteeing to the railroad a right of way not less than one hundred feet in width. *Pearsall* v. *Great Northern R. R. Co*, 161 U. S. 646, 673.

The act of the legislature absolutely forbidding the exercise of powers originally granted to the corporation, was sustained in the interest of the public, where those powers remain unexecuted. In the case at bar Congress has enacted a law in the interest of the public diminishing the grant to the Pacific Railroad Companies from a right of way as originally granted of four hundred feet to a right of way as amended of one hundred feet, but only as to those portions of the original right of way outside of the

one hundred foot width which have remained unused by the companies for long periods of time. *L. & N. R. R. Co.* v. *Kentucky*, 161 U. S. 677, 700.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Ejectment to recover certain described lands alleged to constitute part of the right of way of plaintiff (being such in the court below, we will so call it).

The allegations of the complaint are that plaintiff and defendant are corporations, and that plaintiff is engaged in the operation of a railroad from Ogden, in Utah, easterly through certain States to Council Bluffs, Iowa, and over the lands in controversy, they being portions of its right of way made by the act of Congress of July 1, 1862, c. 120, 12 Stat. 489, of the width of 400 feet. The right of way was acquired under said act of Congress, which is entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military and other purposes." Section 2 of the act provides as follows: "That the right of way through the public lands be, and the same is hereby, granted to said company [the Union Pacific Railroad Company] for the construction of said railroad and telegraph line; and the right, power, and authority is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof; said right of way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, work-shops, and depots, machine shops, switches, sidetracks, turntables, and water stations."

By virtue of said act of Congress and amendatory acts, certain railroad companies, which are enumerated, theretofore organized and existing in pursuance of said acts and subject to and enjoying the rights created thereby, were consolidated into a new corporation known as "The Union Pacific Railway Company," and the corporation thus created became vested with all the rights of the said constituent corporations, and the plaintiff has become the successor of the Union Pacific Railway Company and is entitled to the possession of the land in controversy and that defendant wrongfully keeps it out of the possession thereof. The ground of the asserted right of defendant is alleged to be an act of Congress entitled "An act legalizing certain conveyances heretofore made by the Union Pacific Railroad Company," approved June 24, 1912, c. 181, 37 Stat. 138, which act, it is alleged, is unconstitutional in that it seeks to deprive plaintiff of its vested rights and titles in and to the lands and to deprive it of its lands and property without due process of law.

The answer of defendant admits all of the allegations of the complaint except the possession of the legal title to the lands in plaintiff and that they are unlawfully held from it and alleges that defendant and its immediate grantors have been for more than ten years prior to the filing of the complaint in the adverse possession thereof under the act of Congress of June 24, 1912, and that such possession constitutes a bar to the action.

Plaintiff demurred to the answer as not constituting a defense. The demurrer was overruled and, plaintiff declining to plead further, judgment was entered that it "take nothing in said action" and that the defendant have and recover costs. This appeal was then prosecuted.

The crux of the controversy is the act of June 24, 1912. There is no question of the grant of the right of way and its extent or that the lands in suit are within it.

The act provides that all conveyances and agreements

heretofore made by the enumerated railway or railroad companies "of or concerning land forming part of the right of way" under the act of Congress of July 1, 1862, "and all conveyances or agreements confining the limits of said right of way, or restricting the same, are hereby legalized, validated, and confirmed to the extent that the same would have been legal or valid if the land involved therein had been held by the corporation making such conveyance or agreement under absolute or fee simple title.

"That in all instances in which title or ownership of any part of said right of way heretofore mentioned is claimed as against said corporations, or either of them, or the successors or assigns of any of them, by or through adverse possession of the character and duration prescribed by the laws of the State in which the land is situated, such adverse possession shall have the same effect as though the land embraced within the lines of said right of way had been granted by the United States absolutely or in fee instead of being granted as a right of way."

Two contentions are made by plaintiff, (1) The act is not retroactive; (2) If it be so construed, it is unconstitutional because it takes plaintiff's vested right and title to the property and transfers the same to defendant without due process of law.

It is established that the right of way to the several railroads was a present absolute grant, subject to no conditions except those necessarily implied, such as that the roads should be constructed and used. And it has been decided that the right of way was a very important aid given to the roads, (*Railroad Company* v. *Baldwin*, 103 U. S. 426; *Stuart* v. *Union Pacific Railroad Co.*, 227 U. S. 342), and that it could not be voluntarily transferred by the companies nor acquired against them by adverse possession. *Northern Pacific Railway Co.* v. *Townsend*, 190 U. S. 267; *Northern Pacific Railroad Co.* v. *Smith*, 171

U. S. 260, 275; *Northern Pacific Railway Co.* v. *Ely*, 197 U. S. 1, 5. Of this defect of power in the companies and the defect of right in the possessors of the right of way, the act of June 24 was intended to be corrective. But of what time was it intended to speak—to the past or future?—to apply to that which was done, or that which was to be done? There is no doubt as to the answer in the case of agreements or conveyances by the company. The act is explicit that they are those "heretofore made" by the enumerated companies. There is no such qualifying word of the "title or ownership" "claimed as against" the corporation by adverse possession. Construction, therefore, becomes necessary, and the first rule of construction is that legislation must be considered as addressed to the future, not to the past. The rule is one of obvious justice and prevents the assigning of a quality or effect to acts or conduct which they did not have or did not contemplate when they were performed. The rule has been expressed in varying degrees of strength but always of one import, that a retrospective operation will not be given to a statute which interferes with antecedent rights or by which human action is regulated, unless such be "the unequivocal and inflexible import of the terms, and the manifest intention of the legislature." *United States* v. *Heth*, 3 Cranch, 399, 413; *Reynolds* v. *McArthur*, 2 Pet. 417; *United States* v. *American Sugar Refining Co.*, 202 U. S. 563, 577; *Winfree, Admr.*, v. *Northern Pac. Railway Co.*, 227 U. S. 296. Surely such imperative character cannot be assigned to the words of the act of June 24; and the intention is not so manifest as to strengthen the insufficiency of the words. Indeed, all reasonable considerations determine the other way.

We have seen that the conveyances and agreements which were legalized were those theretofore made, that is, consummated acts of the company deliberately done to transfer its right. Can it be said that the adverse

possession which was to transfer the right was to be less complete, not fully adverse in fact and law, at once assertive of title and concessive of it? It is to be remembered that there was no sanction of a right to the possession of the defendant or possibility of a right by the railroad company's non-action. There was not a moment of time in which the railroad was called upon to act or lose its right; there was not a moment of time when the possession of defendant initiated an adverse right or constituted an adverse right. This being the situation, it is difficult to believe—or certainly a belief is not compelled—that Congress intended to give to the past conduct of the railroad company a consequence it was not intended to have and did not have. A statute having such a result may incur the opposition of the Constitution. When such may be the result a different construction of the statute is determined. *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 408; *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407.

In *Sohn* v. *Waterson*, 17 Wall. 596, the questions we are now discussing came up for consideration. We there expressed, in considering a statute of limitations whose literal interpretation would have had the effect of making it applicable to actions which had accrued prior to its passage, the rule against retrospective operation, the injustice and unconstitutionality of it. We said that a statute of limitations may affect actions which have accrued as well as those to accrue, and "whether it does or not will depend upon the language of the act and the apparent intent of the legislature to be gathered therefrom." But it was said that, even against a literal interpretation of the terms of the statute, "it will be presumed that such was not the intention of the legislature. Such an intent would be unconstitutional. To avoid such a result, and to give the statute a construction that will enable it to stand, courts have given it a prospective

operation." And three modes were pointed out as having been adopted by the courts: (1) to make the statute apply only to causes of action arising after its passage; (2) to construe the statute as applying to such actions only as have run out a portion of the time, but which still have a reasonable time left for the prosecution of the action before the statutory time expires—which reasonable time is to be estimated by the court—leaving all other actions accruing prior to the statute unaffected by it; and (3) the rule announced in *Ross* v. *Duval*, 13 Peters, 45, 62, and *Lewis* v. *Lewis*, 7 Howard, 776, 778.

Of the first two modes there was condemnation. The third was approved. It was said of the first that it left "all actions existing at the passage of the act, without any limitation." Which would not be presumed as intended. The second was said to be founded on no better principle than the first, and was a more arbitrary rule than that, as it left "a large class of actions entirely unprovided with any limitation whatever, or, as to them, unconstitutional."

Speaking of the rule announced in the cited cases, it was said: "In those cases certain statutes of limitation—one in Virginia and the other in Illinois—had originally excepted from their operation non-residents of the State, but this exception had been afterwards repealed; and this court held that the non-resident parties had the full statutory time to bring their actions after the repealing acts were passed, although such actions may have accrued at an earlier period. 'The question is,' says Chief Justice Taney (speaking in the latter of the cases just cited), 'From what time is this limitation to be calculated? Upon principle, it would seem to be clear, that it must commence when the cause of action is first subjected to the operation of the statute, unless the legislature has otherwise provided.'"

*Sohn* v. *Waterson* was cited and its principle applied in *Herrick* v. *Boquillas Cattle Co.*, 200 U. S. 96. A paragraph

in the statutes of Arizona prescribed a limitation of actions as follows: "Any person who has a right of action for recovery of any lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using and enjoying the same, shall institute his suit therefor within ten years next after his cause of action shall have accrued, and not afterward." Rev. Stats. of Arizona, 1901, par. 2938.

It will be observed that the language of the paragraph, as of the statute passed on in *Sohn* v. *Waterson*, or, it may be, the act of June 24 under review, literally interpreted, would apply to causes of action which have accrued. The Supreme Court of the Territory refused to give that effect to the provision, and "decided," as this court said, "that under no canon of construction or rule giving a retroactive effect to a new statute of limitations could paragraph 2938 be made to apply to this case." And, after considering all possible constructions of the statute expressed by the Supreme Court of the Territory, among others, that if it be construed as absolutely barring causes of action existing at the time of its passage, it was unconstitutional, citing *Sohn* v. *Waterson*, this court approved the views expressed and said that the court committed no error in determining that under no possible hypothesis could the limitation prescribed operate to bar the plaintiff's action.

The principle of these cases forbids a retrospective operation to be given to the statute under consideration. To do so would cause in a high degree the evil and injustice of retroactive legislation. As said by plaintiff's counsel, the possession of defendant prior to the statute "had no effect on the title, and was not, as between the parties, even a threat against it." And we are loath to believe that Congress intended by an imperative declaration of law, immediately operating, to give defendant's possession another character—one hostile to the title.

Defendant does not combat plaintiff's contentions based

on considering the act of June 24, 1912, as one of limitation. Indeed, the admission is "that prior to the passage of the Act in controversy, title by adverse possession could not be acquired as against the plaintiff in error in its original right of way grant, and it is further admitted that title could not have been acquired by adverse possession subsequent to the passage of the Act." Defendant does not regard the act as a limitation of the remedy but as amendatory of the charter of the company, an exercise of a right reserved in the acts of July 1, 1862 [1] and July 2, 1864.[2] The argument is, disregarding its involutions, that the right of way was not a right in fee but only a right to use, which was forfeited by non-use, and that the right which thereby reverted to the United States was, by the act of June 24, conveyed to those in possession of the land. And the exercise of the right reserved, it is contended, neither impairs any contract with the railroad nor divests its property. Nor does it come under the condemnation of being retroactive legislation, it is further contended. We need not follow the discussion by which these contentions are attempted to be supported. We meet them all by the declaration that Congress by the act of June 24 did not intend to exercise the power over the charters of the companies reserved to it. The exercise of such power would naturally only find an impulse in some large national purpose and would hardly be provoked by a desire to legalize the encroachments here and there on the right of way of a transcontinental railroad.

We are constrained to believe that when Congress intends to forfeit or limit any of the rights conveyed to aid that great enterprise, it will do so explicitly and directly

[1] "Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act." 12 Stat. 497.

[2] "And be it further enacted, That Congress may, at any time, alter, amend, or repeal this act." C. 216, 13 Stat. 356, 365.

by a measure proportionate to the purpose and not leave it to be accomplished in a piece-meal and precarious way—not by confirming a few conveyances which may have been made or legalizing trespasses which may be made.

But if it could be conceded that the act of June 24 was intended as an amendment of the charters of the companies, the question would still occur as to its effect—as to what time it should be considered as applying, whether to the past or the future. That question we have decided.

*Judgment reversed and cause remanded with directions to sustain the demurrer to the answer.*

MR. JUSTICE HUGHES dissents.

MR. JUSTICE HOLMES, MR. JUSTICE LURTON, and MR. JUSTICE PITNEY, took no part in the decision.